(1)
Supreme Court, U.S.
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IN THE

Supreme Court of the United States

REVOCABLE INTERVIVIOS TRUST OF
MABEL MARIE GRIFFIN AND GRIFFIN FAMILY TRUST,

Petitioners,

v.

HAROLD EUGENE GRIFFIN,
MARATHON NATIONAL BANK,
CALIFORNIA INVESTMENT CLUB,
AND TD INVESTMENT FUND,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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93 pp

QUESTION PRESENTED FOR REVIEW

Whether the United States Bankruptcy Court abused its discretion by failing to adhere to this Court's precedential authority as set forth in *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership,* 507 U.S. 380 (1993), when it denied petitioners' request to file their proofs of claim beyond the bar date in the absence of any evidence to support a finding of either:

1) Bad Faith on the Part of the Moving Parties; or

2) Prejudice to A) the Opposing Parties; or B) the Judicial Administration of Chapter 11 Bankruptcy Cases.

PARTIES TO THE PROCEEDING

INTER VIVOS TRUST OF MABEL MARIE GRIFFIN

Trustor:	Mabel Marie Griffin
Trustee:	Harold Eugene Griffin
Beneficiaries:	Chester Lee Griffin, Kenneth Ray Griffin, Harold E. Griffin, Sr., Stephen Ray Griffin and Harold E. Griffin, Jr.

GRIFFIN FAMILY TRUST

Trustor:	Alfred Gus Griffin
Trustee:	Harold E. Griffin, Sr.
Beneficiaries:	Kenneth Ray Griffin, Harold E. Griffin, Sr.

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PETITION FOR WRIT OF CERTIORARI

This Petition for Writ of Certiorari seeks this Court's discretionary review of the U.S. Bankruptcy Court's denial of a request to file tardy proofs of claim under Rule 9006(b)(1) of the *Federal Rules of Bankruptcy Procedure*, the Bankruptcy Appellate Panel's [BAP] affirmance of that denial, the affirmance of the BAP's decision by the U.S. Court of Appeals for the Ninth Circuit and the Ninth Circuit's denial of the Petition for Rehearing.

OPINION BELOW

On March 31, 2001, the U.S. Court of Appeal for the Ninth Circuit denied the Petition for Rehearing and for Rehearing *En Banc* [App. D] of its February 21, 2001 decision [App. A] affirming the May 25, 1999 decision [App. B] of the Bankruptcy Appellate Panel of the Ninth Circuit, which in turn had affirmed the September 8, 1997 order [App. C] of the United States Bankruptcy Court, Central District of California, denying the motion of debtor/trustee, attorney Harold Eugene Griffin, to disburse funds to the Revocable Intervivos Trust of Mabel Marie Griffin and the Griffin Family Trust ["Trusts" or "Petitioners"] and denying the Petitioners' April 1, 1997 request [App. E] to file late proofs of claim, on the sole ground that Harold Eugene Griffin, as an attorney, should have known better. In *Pioneer Invest. Svs. v. Brunswick Assoc.*, this Court held that an attorney's failure to file a proof of claim by the bar date can constitute excusable neglect within the meaning of Rule 9006(b)(1).

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 *United States Code* Section 1331 and Rule 10(c) of the *Supreme Court Rules.*

CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED

28 *United States Code* Section 1331; Rule 3003(c)(3) of the *Federal Rules of Bankruptcy Procedure;* and Rule 9006(b)(1) of the *Federal Rules of Bankruptcy Procedure.*

STATEMENT OF THE CASE AND STATEMENT OF FACTS

In pro per, Harold Eugene Griffin [GRIFFIN], as debtor in possession, filed his Chapter 11 Petition on December 29, 1992. On page 11 of Schedule F, GRIFFIN listed the Trust Estate of Mabel Marie Griffin, along with the Trust Estate of Alfred Gus Griffin [Griffin Family Trust] as Class 2.2 creditors of GRIFFIN'S debtor estate. The respective claims in the amounts of $175,000.00 and $250,000.00 were inadvertently noted by GRIFFIN'S non-lawyer son as "unliquidated." The claims against the GRIFFIN estate arose as a result of GRIFFIN'S borrowing from the TRUSTS prior to the filing of the Chapter 11 petition.

A Notice of Motion and Motion to Confirm Plan was sent to all creditors including the TRUSTS setting March 22, 1994 as the last day to file proofs of claim. No proof of claim was filed by either TRUST.

The Debtor's Second Amended Plan of Reorganization specifically provided for each TRUST and set forth the specific amount owed by the estate to each. Prior to the confirmation of the plan, GRIFFIN and all of the creditors knew of the existence of the TRUSTS' claims and the exact amount of each. The plan was confirmed by the Bankruptcy Court on June 23, 1994.

The plan conditioned distribution to Class 2.2 creditors on a cash recovery in a lawsuit brought by GRIFFIN against Douglas Cancienne. [*Harold Griffin v. Cancienne*, Superior Court of California, Case No. BC 063260] Ultimately, a settlement was received by GRIFFIN'S estate in the amount of $300,000.

GRIFFIN then filed a motion for final decree and a request that the Bankruptcy Court approve certain disbursements including the actual amounts to be distributed to the TRUSTS, Marathon National Bank, TD Investment Fund and California Investment Club, triggering the disbursements provisions to Class 2.2 members.

The Bankruptcy Court, sua sponte, raised the issue that since the TRUSTS had not filed any proofs of claim, they were not entitled to participate in any disbursement. Marathon

National Bank, TD Investment Fund and California Investment Club then claimed that they were entitled to *all* of the monies to be disbursed to claim holders in Class 2.2 because the TRUSTS had failed to file timely proofs of claim.

Once the TRUSTS had retained counsel, they requested the Court to allow the TRUSTS to file late proofs of claim. The Bankruptcy Court denied GRIFFIN'S motion for disbursement of funds, etc., reasoning that since GRIFFIN'S nonlawyer son listed the claims of the TRUSTS as "unliquidated," the TRUSTS were required to file proofs of claim; since they did not do so, they could not share in the disbursement to Class 2.2 members. The Bankruptcy court denied the request to allow the TRUSTS to file late proofs of claim because Griffin, as an attorney, "should have followed the rules."

ARGUMENT

This Court must grant the petition to determine whether the United States Bankruptcy Court abused its discretion by failing to adhere to this Court's precedential authority as set forth in *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership,* 507 U.S. 380 (1993), when it denied Petitioners' request to file their proofs of claim beyond the bar date in the absence of any evidence to support a finding of either: 1) bad faith on the part of the moving parties; or 2) prejudice to a) the opposing parties; or b) the judicial administration of Chapter 11 bankruptcy cases.

Rule 3003(c)(3) of the *Federal Rules of Bankruptcy Procedure* provides that the "court shall fix and for good cause shown may extend the time within which proofs of claims or interests may be filed." In this case, the Bankruptcy Court fixed that date at March 22, 1994.

Rule 9006(b)(1) of the *Federal Rules of Bankruptcy Procedure* empowers a bankruptcy court to permit a late filing if the movant's failure to comply with an earlier deadline "was the result of excusable neglect." In *Pioneer Inv. Services Co. v. Brunswick Assoc., Ltd. Partnership,* 507 U.S. 380, 113 S. Ct. 1489, 123 L. Ed. 2d 74, this Court interpreted "excusable neglect" under Rule 9006(b)(1). In *Pioneer Inv.*, as unsecured creditors of petitioner [a company seeking relief under Chapter 11 of the Bankruptcy Code], respondents were required to file

proofs of claim with the Bankruptcy Court before the bar date established by that court.

An August 8, 1989 bar date was included in a "Notice for Meeting of Creditors" received from the court by Mark Berlin, an official for respondents. Respondents' attorney was provided with a complete copy of the case file and, when asked, assertedly assured Berlin that no bar date had been set. On August 23, 1989, respondents asked the court to accept their proofs under Bankruptcy Rule 9006(b)(1), which allows a court to permit late filings where the movant's failure to comply with the deadline "was the result of excusable neglect."

The court refused, holding that a party may claim excusable neglect only if the failure to timely perform was due to circumstances beyond its reasonable control. The District Court remanded the case ordering the Bankruptcy Court to evaluate respondents' conduct under a more liberal standard. The Bankruptcy Court applied that standard and again denied the motion, finding that several factors, e.g., the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, and whether the creditor acted in good faith, favored respondents, but that the delay was within their control and that they should be penalized for their counsel's mistake.

The Court of Appeals reversed. It found that the Bankruptcy Court had inappropriately penalized respondents for their counsel's error, and that the inconspicuous placement of the bar date in a notice for a creditors' meeting without any indication of the date's significance left a dramatic ambiguity in the notification that would have confused even a person experienced in bankruptcy.

In affirming the Court of Appeals, this Court held that an attorney's inadvertent failure to file a proof of claim by the bar date can constitute "excusable neglect" within the meaning of Rule 9006(b)(1). This Court reasoned that Congress plainly contemplated that the courts would be permitted to accept late filings caused by inadvertence, mistake or carelessness, not just those caused by intervening circumstances beyond the party's control.

Because GRIFFIN is both the debtor and trustee of the TRUSTS, there is no danger of prejudice to the debtor. Without explaining how, Marathon National Bank, California Investment Club and TD Investment Fund [Respondents] contend that the length of the delay between plan confirmation on June 16, 1994 and the TRUSTS' April 1, 1997 request to file proofs of claim constituted a delay in the case which was highly prejudicial to all creditors and impacted substantially on the administration of the Chapter 11 case. This is simply untrue.

All the creditors knew that the TRUSTS were requesting that their claims be paid if the estate won the Cancienne case. The TRUSTS were specifically provided for as members of Class 2.2 and the amount of each claim was specifically set forth. Because the Cancienne case settled with a substantial cash infusion into the estate of the debtor, all creditors benefitted including members of Class 2.1 and 2.2.

The plan contemplated that there would be an additional payment to all creditors if the Cancienne case resulted in a settlement beneficial to the estate.

Specifically, the plan provided that members of both Class 2.1 and 2.2 would receive their pro rata share of the Cancienne settlement after payment of attorneys' fees and costs.

The delay in the administration of the estate was caused by the failure of the Respondents to object to the allowance of the TRUSTS' claims until it became clear that there would be sufficient funds to pay the claims of these respondents in their entirety. These objections should have been raised at plan confirmation.

Marathon National Bank was included as a member of the Class and did not need to object unless it was to the allowance of the TRUSTS' claims. It made no such objection at that time.

California Investment Club and TD Investment Fund did object, requesting that they be included as members of the Class. They did not raise any objection to the allowance of the TRUSTS' claims.

Once it became obvious that there was money due to the debtor's estate, these respondents not only objected to the

TRUSTS' inclusion as members of the Class, but also attempted to raise the objection that the TRUSTS were never proper creditors of the debtor's estate in the first instance. The debtor was required to go to great lengths to demonstrate conclusively to the Court that he had borrowed money from the TRUSTS.

Because all parties knew both that the TRUSTS were making claims and the amount of those claims, they should have been equitably estopped from objecting to the late filings, and the Bankruptcy Court should have allowed the TRUSTS to file late proofs of claim.

Although the determination of what sorts of neglect will be considered "excusable" is an equitable one, taking account of all relevant circumstances, in determining whether a party's failure to timely file was excusable, the proper focus is upon whether the neglect of that party and its counsel was excusable. The neglect of Petitioners and their counsel, i.e., GRIFFIN was excusable. By its comment that as an attorney, GRIFFIN should have followed the rules, the Bankruptcy Court emphasized the fact that GRIFFIN had reasonable control over the cause of the delay, while it ignored other facts profoundly affecting the equities of the situation.

At the relevant time, GRIFFIN was an elderly, hearing-impaired attorney who specialized in landlord-tenant cases. He had no experience in bankruptcy cases. His non-lawyer son completed the bankruptcy petition and schedules. The Class 2.2 creditors knew from the moment they reviewed and approved the plan that the TRUSTS had claims against the estate, the amount of the claim for each TRUST, and how GRIFFIN proposed to pay those claims.

While it is true that the determination of whether a party's neglect is excusable is an equitable one, the result of the Bankruptcy Court's ruling is anything but equitable.

After the order authorizing partial disbursement of funds, the $101,157.84 balance remaining of the Cancienne settlement will be disbursed as follows: The Marathon National Bank will receive an additional $19,289.27; the California Investment Club and TD Investment Fund will receive $65,819.20, i.e.,

100% of the amount of their allowed claims, while the TRUSTS receive nothing.

If GRIFFIN is permitted to disburse the balance of the Cancienne settlement to the TRUSTS on a pro rata basis with the other members of Class 2.2, all non-priority unsecured claimants will receive approximately 30% of the amount of their claims which is a far more equitable outcome because it benefits all, rather than just two claimants.

Emphasizing the fact that GRIFFIN was an attorney is just another way of applying the discarded criteria of showing that he had reasonable control of the cause of delay.

Without more, this is an insufficient basis for finding inexcusable neglect.

The "unliquidated" designation of the TRUSTS' claims was inadvertent. The form was prepared by the elderly attorney's non-lawyer son. Had the claims been properly designated as liquidated, no proof of claim would be necessary.

Apart from the failure of the Respondents to assert timely objections to allowance of the TRUSTS' claims, e.g., at plan confirmation, another reason for the delay in filing the proofs of claim was the proviso in the plan which provided that no distribution would be made to the Class 2.2 members unless and until settlement proceeds were recovered in the Cancienne case.

Although the Bankruptcy Court raised a question as to whether the TRUSTS acted in good faith, no hearing contesting the validity of the TRUSTS' claims was ever conducted. Thus, no evidence was taken in support of any claim of bad faith. It would be an abuse of discretion to find bad faith without evidence to support it.

Allowing the TRUSTS to file their proofs of claim would in no way prejudice anyone because everyone knew about the TRUSTS' claims and the amount owed to each trust. The other Class 2.2 creditors knew all about the TRUSTS' claims because they were provided for in the plan which they approved by their vote. They raised no prior objections [except to include themselves as Class 2.2 creditors] until the Cancienne case settled, and after the Bankruptcy Court indicated that the

TRUSTS could share in the disbursement of those funds. They then objected in order to take all of the money.

CONCLUSION

Without a showing of bad faith or prejudice, either to the debtor or to the judicial administration of the debtor's estate, the Bankruptcy Court abused its discretion when it disregarded this Court's precedential authority and declined to find the TRUSTS' neglect to file timely proofs of claim excusable and refused to grant the request by the TRUSTS to accept the tardy proofs of claim. The BAP and the Ninth Circuit Court of Appeals' affirmance of the Bankruptcy Court's ruling, coupled with the Ninth Circuit's denial of the petition for rehearing, violated Rule 10(c) of the *Supreme Court Rules* because by so doing a United States court of appeals decided an important federal question in a way that conflicts with a relevant decision of this Court, i.e., *Pioneer Inv. Services v. Brunswick Assoc., Ltd. Partnership, supra.*

Based on the foregoing, it is respectfully requested that this Court issue the writ of certiorari and schedule the case for briefing and oral argument.

Respectfully submitted,

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Attorney for Petitioners

June 26, 2001

APPENDIX

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Cathy A. Catterson, Clerk
U.S. Court of Appeals
Filed: February 23, 2001

In re:	)	No. 99-56181
HAROLD EUGENE GRIFFIN,	)	
Debtor.	)	BAP NO.
	)	CC-97-1737-PJB
	)	
REVOCABLE INTER VIVOS	)	
TRUST OF MABEL MARIE	)	MEMORANDUM*
GRIFFIN & GRIFFIN FAMILY	)	
TRUST,	)	
Appellants,	)	
v.	)	
HAROLD EUGENE GRIFFIN;	)	
MARATHON NATIONAL BANK;	)	
CALIFORNIA INVESTMENT	)	
CLUB, and TD INVESTMENT	)	
FUND,	)	
Appellees.	)	
	)	

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Perris, Jones, and Brandt, Judges, Presiding

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted February 5, 2001
Pasadena, California

Before: D.W. NELSON, O'SCANNLAIN, and KLEINFELD, Circuit Judges.

Revocable Inter Vivos Trust of Mabel Marie Griffin and Griffin Family Trust ("the Trusts") appeal the decision of the Ninth Circuit Bankruptcy Appellate Panel denying the debtor's motion to disburse funds to the Trusts and denying the Trusts' request to file late proofs of claim. We have jurisdiction pursuant to 28 U.S.C. § 158(d), and we affirm.

The Trusts argue that notice of the bar date did not comport with Rule 7004(b)(3) of the Federal Rules of Bankruptcy Procedure. But Rule 7004 applies to adversary proceedings and contested matters not otherwise governed by the rules. Fed. R. Bankr. P. 7001, 9014. The notice of bar date complied with the rule governing notice to creditors, which states that notice "shall be addressed as such entity or an authorized agent may direct in a filed request; otherwise, to the address shown in the list of creditors or the schedule whichever is filed later." Fed. R. Bankr. P. 2002(g). Moreover, there is no question that the Trusts received actual notice of the bar date.

The Trusts' next argue that their failure to file proofs of claim was the result of "excusable neglect" under *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship,* 507 U.S. 380 (1993). The determination of whether a party's neglect is "excusable" is an equitable one. *Id.* at 395. The Trusts wanted almost three years after the bar date before requesting permission to file late proofs of claim. Even then, they failed to give any explanation for their failure to comply with the deadline. There is also some question as to whether the Trusts

acted in good faith. The Trusts have failed to show that the bankruptcy judge's finding that "the equities are not with the Griffins" was an abuse of discretion.

AFFIRMED.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

Nancy B. Dickerson
U.S. BKCY APP. PANEL
OF THE NINTH CIRCUIT
Filed: May 25, 1999

In re:	)	BAP NO.
HAROLD EUGENE GRIFFIN,	)	CC-97-1737-PJB
Debtor.	)	
	)	Bk. No. LA
	)	92-59106 GM
REVOCABLE INTER VIVOS	)	
TRUST OF MABEL MARIE	)	MEMORANDUM[1]
GRIFFIN and GRIFFIN FAMILY	)	
TRUST,	)	
Appellants,	)	
	)	
v.	)	
HAROLD EUGENE GRIFFIN;	)	
MARATHON NATIONAL BANK;)		
CALIFORNIA INVESTMENT	)	
CLUB, and TD INVESTMENT	)	
CLUB,	)	
Appellees.	)	

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this Circuit except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th Cir. BAP Rule 13 and Circuit Rule 36-3.

Argued and Submitted on
January 21, 1999 at Pasadena, California

Filed - May 25, 1999

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Geraldine Mund,
Chief Bankruptcy Judge, Presiding

Before: PERRIS, JONES and BRANDT,
Bankruptcy Judges.

The Trust Estate of Mabel Griffin and the Trust Estate of Gus Griffin ("the Trusts") appeal the bankruptcy court's order denying debtor's motion to disburse funds to the Trusts because of their failure to file timely proofs of claims and denying their motion extension of time to file claims. WE AFFIRM.

FACTS

Debtor, Harold E. Griffin, who is an attorney, filed his chapter 11 petition on December 29, 1992, *pro se*. Debtor's schedule of unsecured nonpriority creditors included the Trusts, each of which is for the benefit of debtor's parents and for which debtor serves as trustee. Debtor specified that the Trust Estate of Gus Griffin had a claim of $250,000 and the Trust Estate of Mabel Griffin had a claim of $175,000. The schedule gives debtor's address as the address for each of the trusts.

Debtor's son prepared Schedule F and he listed all debts, including the Trusts' claims, as "unliquidated." Debtor's son, by affidavit, explained that the Trusts' claims were listed as unliquidated because the amount of the interest on the claims

was uncertain, not because the amounts of the loans were uncertain or unknown.

In June 1993, the court approved the employment of debtor's attorney. Through his attorney, debtor filed a Second Amended Plan of Reorganization, which set forth the amounts owed to the Trusts in sums certain also provided that the total amount of the claims would be "based upon a Proof of Claim to be filed in this case."

The Plan included the Trusts as Class 2.2 claim holders, whose claims would be paid from the receipt, if at any, from three potential sources, one of which was the recovery from debtor's ongoing litigation against Douglas Cancienne. As the result of amendments by interlineation as part of the confirmation process, Class 2.2 claim holders also included creditors TD Investment Fund, California Investment Club, and Marathon National Bank (collective "Creditors").

On January 27, 1994, debtor mailed a notice entitled Notice of Motion and Motion to Confirm the Plan of Reorganization, Notice of Approval and Adequacy of Disclosure Statement, Notice of the Bar Date, Notice of Last day to Object to the Plan, Notice of Last Day for Receipt of Ballots." That notice specifically informed creditors that

> [t]he Court fixed March 22, 1994 as the last day for filing proofs of claim or interest, and accordingly, the claim of any creditor who is required to file a proof of claim, and who fails to do so by that date, shall thereafter be barred and will not participate in any distribution to be paid creditors in this Chapter 11 case.

The unsigned certificate of service accompanying this notice that was included in the Appellants' Excerpts of Record (Tab 4) states that the notice was sent to all interested parties.

Notwithstanding that representation, in the itemized list of the parties served, the Trust Estate of Gus Griffin is included, but the Trust Estate of Mabel Griffin is omitted. Neither Trust filed a proof of claim before or after the bar date.

On June 3, 1994, the bankruptcy court entered an order confirming the debtor's Plan of Reorganization. Almost three years later, in February 1997, debtor's estate received a settlement of $300,000 from the Cancienne litigation ("Cancienne Settlement"). Thereafter, debtor filed a motion for a final decree and for disbursement of the Cancienne Settlement funds to Class 2.2 creditors, including the Trusts.

Creditors objected to disbursement of these funds to the Trusts because neither Trust had filed a proof of claim. In response, the Trusts requested leave to file late claims. The court denied that request and denied the motion to disburse the Cancienne Settlement funds to the Trusts. The Trusts appeal.

ISSUES

1. Whether the bankruptcy court abused its discretion by denying the Trusts' request for an extension of the time to file proofs of claim.

2. Whether the bankruptcy court erred in holding that entry of the order confirming the Debtor's plan did not preclude Creditors from objecting to the proposed distribution to the Trusts as Class 2.2 creditors.

STANDARD OF REVIEW

Whether or not to extend a bar date is a matter within the sound discretion of the bankruptcy court and such a decision will not be set aside absent an abuse of discretion. *In re Dix*, 95 B.R. 134, 136 (9th Cir. BAP 1988). The Ninth Circuit Court of Appeals has held that "[a] reorganization plan resembles a consent decree and therefore, should be construed basically as

a contract." *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n,* 997 F.2d 581, 588 (9th Cir. 1993). Issues of contract construction, including whether a contract is ambiguous, are questions of law reviewed *de novo.* If the contract is ambiguous and the court considers extrinsic evidence to determine the intent of the parties, the determination of intent is a question of fact reviewed for clear error. *In re Ankeny,* 18 B.R. 64, 68 (9th Cir. BAP 1995).

DISCUSSION

1. *Whether the bankruptcy court abused its discretion by deny an extension of the time for the Trusts to file proofs of claim.*[2]

The Trusts argue that the bankruptcy court abused its discretion by failing to allow them to file proofs of claims almost three years late, because the notice of the bar date for filing claims was inadequate and their failure to file claims earlier was the result of "excusable neglect."

A. *Notice*

The Trusts first argue that notice of the bar date for filing claims was improper under Bankruptcy Rule 7004(b) (3),[3] which requires that service must be made to the attention of a specific person. The notices to the Trusts were addressed to the Trusts and did not designate a specific person.

The Trusts' argument is, in essence, that notice of the bar date did not comport with the requirements of due process. Due

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[2] The Trusts argued to the bankruptcy court that they had timely filed informal proofs of claim. The Trusts do not rely on informal proofs of claim on appeal.

[3] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and to the Federal Rules of Bankruptcy Procedure, Roles 1001-9036.

process requires that notice be "reasonably calculated, under all circumstances, to appraise interested parties of the pendency of action and afford them an opportunity to be heard." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). It does not require addressing the notice of the bar date for filing claim to a particular person.

Due process requires that a creditor be furnished notice of the bar date. *In re Ricketts,* 80 B.R. 495, 497 (9th Cir. BAP 1987) (Jones, J., concurring). The manner of such notice is governed by Rule 2002(a) (7), not by Rule 7004, which applies to adversary proceedings and to contested matters that are not otherwise governed by the rules. Fed. R. Bankr. P. 7001, 9014. Rule 2002(a) (7) requires that at least a 20-day notice be given by mail of the time fixed for the filing proofs of claims pursuant to Rule 3003(c). Rule 2002(g) provides in relevant part that notice required to be sent to a creditor, equity security holder, or indenture trustee

> shall be addressed as such entity or an authorized agent may direct in a filed request; otherwise, to the address shown in the list of creditors or the schedule whichever is filed later.

Compliance with such notice requirements satisfies the requirements of due process. *Ricketts* at 497.

In this case, the Trusts did not file a request that the notice be addressed to a specific authorized agent. Therefore, under Rule 2002(g), service by mail of the notice was proper because it was timely mailed to the creditor's address as listed in Schedule F. In addition, the Trusts do not dispute the receipt of the notice or the court's finding that debtor, as the trustee of both trusts, had actual notice of the bar date. A person who has notice of the bar date in one capacity has notice in other capacities. *See* 9 L. King, *Collier on Bankruptcy* ¶ 3003.03[4] (15 ed. Rev. 1997); *In re Terex Corp.*, 45 B.R. 290 (Bankr.

N.D. Ohio 1985) (finding notice to decedent's wife was sufficient notice to her in her capacity as executrix).

B. *Excusable neglect*

The Trusts next argue that, under these circumstances, the court's denial of an extension of time to file their proofs of claim constitutes an abuse of discretion because their failure to timely file was the result of excusable neglect.

Bankruptcy Rule 3003(c) (2) provides that a creditor whose claim is scheduled as "unliquidated" must timely file a proof of claim. In chapter 11 cases, "the court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed." Fed. R. Bankr. P. 3003(c) (3).

A creditor whose claim is scheduled as unliquidated and who fails to file a claim is not treated as a creditor for purposes of distribution and voting. Fed. R. Bankr. P. 3003(c) (2).

Bankruptcy courts, however, may grant a creditor in chapter 11 cases an extension of time to file a proof of claim after the expiration of the bar date, but only upon a showing that the failure to timely file was the result of "excusable neglect." Fed. R. Bankr. P. 9006(b) (1);[4] *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership,* 507 U.S. 380 (1993).

In *Pioneer Investment,* the United States Supreme Court held that the plain meaning of "excusable neglect"

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[4] Rule 9006 (b) (1) provides:

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion...(2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

encompasses late filings that are the result of "inadvertence, mistake, or carelessness, as well as late filings caused by circumstances beyond a party's control." 507 U.S. at 392. The Court concluded that the determination of excusable neglect is an equitable one and the availability of this defense depends upon the bankruptcy court's examination of "all relevant circumstances surrounding the creditor's omission." *Id.* at 395. Included in the Court's list of relevant factors are: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the control of the creditor; and (4) whether the creditor acted in good faith. *Id.* (citing *In re Pioneer Inv. Services Co.*, 943 F.2d 673, 677 (6th Cir. 1991)). This list of relevant factors is not exclusive. *See* 9 *Collier on Bankruptcy* ¶ 3003.03[4] [b]. Other factors that courts have considered include the debtor's knowledge of the claim, the stage of the chapter 11 case, and whether the creditor had notice of the bankruptcy. *Id.*

The bankruptcy court did not abuse its discretion in denying the requested extension of time. The bankruptcy court determined that the equities did not weigh in favor of the Trusts, and a review of the record supports its ruling.

The first inquiry is whether the debtor will be prejudiced the court permitted the late filing of these claims. Where, as here, the interests of the debtor and the creditor are aligned, there is no prejudice to the debtor, because any benefit to the creditor from having its claim paid will inure to the benefit of the debtor. Debtor is the trustee of both Trusts and a beneficiary of both Trusts, and the bankruptcy court recognized that debtor and the Trusts had identical interests. Particularly because it is debtor who is seeking a distribution to the Trusts, there is no showing of prejudice to debtor.

The next and more relevant factor is whether the delay was within the Trusts' control. Here, the court determined that it was because the debtor/trustee knew about the terms of the Plan of Reorganization and knew the bar dates for filing claims. As the court noted, the debtor/trustee along with his attorney drafted and signed the Plan, which specifically required the filing of claims on behalf of the Trusts. Despite debtor/trustee's actual knowledge and despite the fact that the Trusts received proper notice, the Trusts simply failed to file their claims within the specified bar date.

The only reason the Trusts offered to explain their failure to timely file their claims was that neither the debtor/trustee nor his son understood the meaning of the word "unliquidated" and did not know that they had to file the claims on behalf of the Trusts. Despite this alleged lack of understanding, however, the debtor listed all claims in the schedule as "unliquidated." The court rejected this excuse, stating that listing all of the claims as unliquidated was improper and in bad faith. The court noted that the debtor/trustee was an attorney and should have investigated the meaning. Moreover, "inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable neglect [.]'" *Pioneer Investment Services Co.*, 507 U.S. at 392. Thus, the Trusts essentially had no excuse for their substantial delay in filing the proofs of claim.

In balancing the equities, the court correctly considered the factors regarding the length of the delay and its impact on efficient judicial administration. The court noted that the allowance of these late-filed claims would be prejudicial to the other creditors and to the administration of the chapter 11 case, given the substantial delay between the confirmation of the Plan on June 16, 1994 and the Trusts' request on April 1, 1997 to allow late filing of claims. The Creditors raised substantive objections to the Trusts' claims. Specifically, at the April 1, 1997, hearing, Creditors presented documentary evidence that

questioned the validity and existence of the debts owed to the Trusts. If the court had allowed the filing of the claims almost three years late, it would have significantly delayed the administration of the case. It would have required the court to permit the other creditors an opportunity to object to the Trusts' claims. Distribution of a large portion of the $300,000 in proceeds from the Cancienne Settlement would have had to await resolution of the objections to the Trusts' claims.

After consideration of the relevant factors, the bankruptcy court did not abuse its discretion in denying the Trusts an extension of time to file their claims.

2. *Whether a creditor may object to a claim after the Plan has been confirmed.*

The Trusts next argue that, because the confirmed Plan provided for payment to them from the Cancienne Settlement, the court erred by allowing the Creditors to challenge and alter that Plan. The Trusts argue that any objections to their failure to file proofs of claim could only be raised before the confirmation of the Plan. Accordingly, because the Plan provides for payment to the Trusts, the Trusts must be allowed to share in the Cancienne Settlement funds without having to file a claim.

Although there is no dispute as to the accuracy of the basic proposition that the confirmation of a plan constitutes a final judgment that binds all parties of its terms, 11 U.S.C. § 1141 (a); *In re Heritage Hotel Partnership I,* 160 B.R. 374, 377 (9th Cir. BAP 1993), *aff'd* 59 F.3d 175 (9th Cir. 1995) (table), this rule of law does not support the Trusts' argument. The Trusts' argument is premised upon an erroneous interpretation of the Plan. Contrary to the Trusts' contentions, the Plan does not provide for the unconditional disbursement to them of the Cancienne Settlement funds. Instead, the unambiguous terms of the Plan condition the Trusts' participation in the

distribution of debtor's estate upon their filing the requisite proofs of claim. The Plan sets forth this requirement in both section 2.2 and in Article II: General Terms and Provisions. Section 2.02 provides in part:

> In order to vote or receive a distribution under the Plan, a Creditor must have filed a Proof of Claim with the court on or before the Bar Date established by the Court of *March 22, 1994* unless a claim is included in the schedule of debts filed by the Debtors in this Case and is not scheduled as disputed, contingent or unliquidated....If a claim is not scheduled or is scheduled but disputed, contingent or unliquidated, the creditor will not be allowed to participate in voting or distribution if he has not timely filed a Proof of Claim in the proper form.

Therefore, the court's order denying the Trusts the right to participate in the distribution of the Cancienne Settlement funds because they failed to file their claims is, in effect, an order enforcing the terms of the Plan.

CONCLUSION

We AFFIRM the court's order denying the debtor's motion for disbursement of funds from the Cancienne Settlement to the Trusts.

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit Court of Appeals
125 South Grand Avenue
Pasadena, California 91105
(626) 583-7906

NOTICE OF ENTRY OF JUDGMENT

BAP No. CC-97-1737-PJB

RE: HAROLD EUGENE GRIFFIN

A separate Judgment was entered in this case on 5/25/99.

BILL OF COSTS:

Bankruptcy Rule 8014 provides that costs on appeal shall be taxed by the Clerk of the Bankruptcy Court. Cost bills should be filed with the Clerk of the Bankruptcy Court from which the appeal was taken. Also see, Federal Rule of Appellate Procedure 39.

ISSUANCE OF THE MANDATE:

The mandate, a certified copy of the judgment sent to the Clerk of the Bankruptcy Court from which the appeal was taken, will be issued 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged by order. See Federal Rule of Appellate Procedure 41.

APPEAL TO COURT OF APPEALS:

An appeal to the Ninth Circuit Court of Appeals is initiated by filing a notice of appeal with the Clerk of this Panel. The Notice of Appeal should be accompanied by payment of the $105 filing fee and a copy of the order or decision on appeal.

Checks may be made payable to the U.S. Court of Appeals for the Ninth Circuit. See Federal Rules of Appellate Procedure 6 and the corresponding Rules of the United States Court of Appeals for the Ninth Circuit for specific time requirements.

[Certificate of Mailing Omitted in Printing]

APPENDIX C

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

HAROLD GRIFFIN, Debtor.	CASE NO.: LA 92-59106-GM CHAPTER 11 ORDER DENYING DEBTOR'S MOTION FOR DISBURSEMENT OF FUNDS FROM CANCIENNE SETTLEMENT TO THE TRUST ESTATE OF GUS GRIFFIN & THE TRUST ESTATE OF MABEL GRIFFIN Date: July 31, 1997 Time: 9:00 A.M. Room: 303 21401 Burbank Blvd. Woodland Hills, CA 91367

Filed: Sep. 8, 1997
Clerk, U.S. Bankruptcy Court
Central District of California
By Deputy Clerk

Entered: Sep. 8, 1997
Clerk, U.S. Bankruptcy Court
Central District of California
By Deputy Clerk

Hearing having been held on Motion of the Debtor, HAROLD GRIFFIN, through his attorneys, Lawrence R. Young & Associates, P.C., Lawrence R. Young, Esq. for Disbursement of Funds to the Trust Estate of Mabel Griffin and the Trust Estate of Gus Griffin from the Cancienne Settlement, counsel for the Debtor having been present, Susan Carole Jay, Esq. of the Law Office of David B. Bloom having appeared on behalf of Marathon National Bank, James L. Huffman, Esq. having appeared on behalf of the Mabel Marie Griffin and Gus Griffin Trusts, John F. Knudson, Esq. having appeared on behalf of California Investment Club and TD Investment Fund, Thomas M. Banks, Esq. having appeared as a witness pursuant to subpoena and other appearances as stated in the record of proceedings, the Court having read and considered the pleadings, having heard the testimony of witnesses, oral argument of counsel, oral agreements of the parties and good cause appearing therefor,

THE COURT FINDS as follows:

1. The Trust Estate of Gus Griffin is scheduled in Schedule F of the Debtors Schedules of Creditors Holding Unsecured Non-Priority Claims attached to his Petition as an "unliquidated claim" in the amount of $250,000.00 and the Trust Estate of Mabel Griffin is scheduled in Schedule F of the Debtors Schedule of Creditors Holding Unsecured Non-Priority Claims as an "unliquidated claim" in the amount of $175,000.00;

2. No proof of claim was filed by the Trust Estate of Gus Griffin or by the Trust Estate of Mabel Griffin as required by Bankruptcy Rule 3003(c)(2);

3. The Plan specifically provided for payment of claims to the Trust Estate of Gus Griffin as a member of Class 2.2 in the amount of $250,000.00 and for the Trust Estate of Mabel Griffin in the amount of $175,000 but also stated that "[n]o

distribution shall be made to creditors in this Class unless and until the Debtor realizes monies from" the Cancienne Case and that monies now have been realized from that case;

4. There are funds available for disbursement to claim holders in Class 2.2;

5. On June 23, 1994, the Court entered an Order Confirming the Plan of Reorganization as Amended by Interlineation;

6. Notice of the Bar Date and Notice of the deadline for filing of proofs of claim in this case was timely mailed to the respective Trusts at the address listed in Schedule F setting the Bar Date and Last Day for Filing of Proofs of Claim in this case as March 22, 1994;

7. The Trustee of the respective Trusts had actual notice of the Bar Date;

8. The Trusts were required to file a proof of claim if they were to share in the disbursement to members of Class 2.2;

9. The Trusts failed to file a timely proof of claim;

10. As a result, the only members of Class 2.2 are California Investment Club, TD Investment Fund and Marathon National Bank all of whom filed timely proofs of claim in this case.

THE COURT ORDERS AS FOLLOWS:

The Motion of the Debtor to Disburse Funds from the Cancienne Settlement to the Trust Estate of Gus Griffin and to the Trust Estate of Mabel Griffin is denied.

The request of the Trust Estate of Gus Griffin and the Trust Estate of Mabel Griffin to file a late proof of claim pursuant to Bankruptcy Rule 9006(b)(1) is denied.

30% of the amount of the allowed claims of California Investment Club, TD Investment Fund and Marathon National Bank have been authorized for disbursement in a companion Order forthwith. No funds shall be disbursed to the Trust Estate of Gus Griffin or to the Trust Estate of Mabel Griffin.

The funds available for disbursement to allowed claims in Class 2.2 which have not already been authorized to be disbursed shall remain on deposit in the trust account of Lawrence R. Young, Esq., General Bankruptcy Counsel, pending determination of any appeal which may be taken from this Order or the companion Order.

Dated: September 8, 1997.

Geraldine Mund

JUDGE OF THE BANKRUPTCY COURT

[Approvals as to Form Omitted in Printing]

[Certificate of Service Omitted in Printing]

NOTE TO USERS OF THIS FORM

Physically attach this form as the last page of the proposed Order or Judgment. Do not file this form as a separate document.

(SHORT TITLE)	CHAPTER 11 CASE NUMBER
In re HAROLD GRIFFIN, Debtor.	LA 92-59106-GM

NOTICE OF ENTRY OF JUDGMENT OR ORDER AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

You are hereby notified, pursuant to Local Bankruptcy Rule 116(1)(a)(iv), that a judgment or order entitled *(specify)*

ORDER DENYING DEBTOR'S MOTION FOR DISBURSEMENT OF FUNDS FROM CANCIENNE SETTLEMENT TO THE TRUST ESTATE OF GUS GRIFFIN & THE TRUST ESTATE OF MABEL GRIFFIN

was entered on (specify date): September 8, 1997

I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on *(specify date)*: September 8, 1997

JON D. CERETTO
Clerk of the Bankruptcy Court

By: /s/
Deputy Clerk

[Service List and Proof of Service Omitted in Printing]

APPENDIX D

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Cathy A. Catterson, Clerk
U.S. Court of Appeals
Filed: March 30, 2001

In re:	)	No. 99-56181
HAROLD EUGENE GRIFFIN,	)	
Debtor.	)	BAP NO.
_____	)	CC-97-1737-PJB
	)	
REVOCABLE INTER VIVOS	)	
TRUST OF MABEL MARIE	)	ORDER
GRIFFIN & GRIFFIN FAMILY	)	
TRUST,	)	
Appellants,	)	
v.	)	
HAROLD EUGENE GRIFFIN;	)	
MARATHON NATIONAL BANK;)		
CALIFORNIA INVESTMENT	)	
CLUB, and TD INVESTMENT	)	
FUND,	)	
Appellees.	)	
_____	)	

Before: D.W. NELSON, O'SCANNLAIN, and KLEINFELD, Circuit Judges.

Judges O'Scannlain and Kleinfeld voted to deny the petition for rehearing and to deny the petition for rehearing en banc, and Judge D.W. Nelson so recommended.

The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. (Fed.R. App.P. 35.)

The petition for rehearing and the petition for rehearing en banc are denied.

[Certificate of Service Omitted in Printing]

APPENDIX E

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:	)	Case No. SV92-59106-GM
HAROLD EUGENE GRIFFIN,	)	Woodland Hills, California
Debtor.	)	Tuesday, April 1, 1997
	)	9:00 A.M.

Chapter 11

1. OSC why case should not be dismissed or converted, cont'd fr 3/6/97.

2. Debtor's motion for final decree, cont'd fr 3/5/97.

3. Motion for order seeking sanctions against debtor and/or his counsel cont'd fr 3/5/97.

1. Motion of Beumer Family Trust to convert from Chapter 11 to Chapter 7, cont'd fr 3/19/97.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GERALDINE MUND
UNITED STATES BANKRUPTCY JUDGE

Proceedings recorded by electronic sound recording. Transcript produced by transcription service.

[1] **WOODLAND HILLS, CALIFORNIA**
TUESDAY, APRIL 1, 1997
9:00 A.M.

THE COURT: All right. Griffin.

MR. MAROKO: Good morning, Your Honor. Ron Maroko, on behalf of the United States Trustee.

MR. YOUNG: Lawrence Young, on behalf of the debtor who is present.

MR. HUFFMAN: Good morning, Your Honor. James Huffman. I am entering into the case. I represent the two trusts that are apparently the focal point of some of the problems at the present time.

I have prepared a brief. I just had it finished and signed yesterday. I faxed it to counsel. I did not have an opportunity to get it to the Court. I would like an opportunity to submit it to the Court, and possibly this matter be put over so the Court and counsel would have an opportunity to adequately review what I have submitted, or what I hope to submit, and I am prepared to argue it today in any case.

THE COURT: Okay.

MR. BREGMAN: Good morning, Your Honor. Jerry Bregman, appearing on behalf of the Beumer Family Trust.

MS. JAY: Good morning, Your Honor. Susan Jay, J-a-y, from David Bloom's Office, on behalf of Marathon National Bank.

MR. KNUDSON: Good morning, Your Honor. John F. [2] Knudson, for the California Investment Club and the TD Investment Fund, unsecured creditors.

THE COURT: Okay Let's start with the Beumer Family Trust. You gave back the property? That's what everybody indicated was happening.

MR. BREGMAN: Your Honor, that has not yet been accomplished. I did speak with Mr. Griffin before this hearing and he has asked and we have agreed to enter into a negotiation which might result in something other than a transfer of the property based on the promise that $2,000 in cash or certified funds, or a cashier's check could be delivered to my office prior to 4:00 o'clock today.

We agreed to a two-week forbearance from any collection action or from insisting on a quitclaim, and would respectfully request a continuance of the hearing on the motion to — or on our motion to convert the case. Certainly we would have informed the —

THE COURT: I'm real confused. I'm real confused. I had papers that said that the property was — was given back.

MR. YOUNG: Well, we received a deed we forwarded to be signed and we assumed it was a fait accompli, but I understand today that they weren't signed, and that while Mr. Griffin, Sr. was in Arizona, a potential of opportunity arose and which, according to his son, he feels he can negotiate this matter now with money outside the present estate and — and not [3] just hand the property back.

THE COURT: Well, I'm not going to —

MR. YOUNG: I'm not sure they want the property back because it seems negative.

THE COURT: Well, I'm not going to continue the motion to — well, we'll see.

MR. YOUNG: Yeah.

THE COURT: Let's see what happens to everything else, okay?

MR. YOUNG: All right.

THE COURT: But I'm —

MR. BREGMAN: Alternatively, we —

THE COURT: — I'm really —

MR. BREGMAN: — we —

THE COURT: — really surprised because I thought — I mean, I get — I got papers that said we've given back the property.

MR. YOUNG: That was my understanding. I thought it was all signed and done till I arrived here this morning and was informed that the deed had not been signed and that a new negotiation was underway.

MR. BREGMAN: If the Court is not inclined to grant a continuance of this —

THE COURT: Well, we'll see. Let's see what happens after everything else.

[4]

MR. BREGMAN: Thank you, Your Honor.

THE COURT: I'm not going to make everybody else come back on your motion to convert. You're either going to get the property back or you're not, or you've got a deal. I mean, that was what — what was going on here.

MR. BREGMAN: Yes, Your Honor.

THE COURT: All right. All right. Let's see the information on the trusts, please.

MR. HUFFMAN: May I approach, Your Honor?

THE COURT: Yeah. Did you — Ms. Jay?

MS. JAY: Yes. Your Honor, thank you. Susan Jay, on behalf of Marathon National Bank.

I wanted to make a comment, Your Honor, because I and my client, we are upset about a few things that have happened since the last hearing.

Two pleadings have been generated from debtor's counsel. One was called a status report, and then the other was called a status report for continued hearing.

After the first status report was generated, I contacted debtor's counsel and said I don't believe that that's what the Court ruled.

THE COURT: You mean this notice of ruling on status report?

MS. JAY: Yes. I'm sorry. Yes, the notice of ruling.

[5]

THE COURT: Okay.

MS. JAY: And I had spoken to Mr. Knudson and we agreed to order a transcript. I informed debtor's counsel that a transcript was being ordered because we had several problems with several of the issues in the notice of ruling.

We have not as of today received the transcript tape back. Actually, we didn't ask for a transcript, we asked for a tape, and that — and what I'm bothered about is not that — so much that the notice of ruling, I feel is incorrect, what I'm bothered about is that debtor's counsel generated a status report for continued hearing that didn't mention that two counsel were distraught

over the notice of ruling and I thought that that was something that should have been included in the status report.

And then I'd also like to mention that Marathon has entered into a stipulation with the debtor. The time we entered into that stipulation, we did not believe that the trusts' claims were still viable claims.

And I wanted to bring all that to the Court's attention before we began.

MR. KNUDSON: Well, I have a couple of comments, Your Honor, as I guess I have throughout these hearings.

Looking at the status report, and it's appropriate that today is April Fool's Day, is I'm looking at a status — or in the status report we had a declaration of Mr. Banks, [6] unsigned. It looked like you would think that Mr. Banks had generate that declaration, but apparently — I'm assuming that Mr. — someone's counsel generated that for Mr. Banks. It's not signed.

As we recall, that there was a question with regard to Mr. Banks as to the amount of his retainer or whatever. We now see on an unsigned declaration that —

MR. YOUNG: Your Honor, if I might just interrupt counsel?

I show a lodging of a signed —

MR. KNUDSON: Well, I received an unsigned —

MR. YOUNG: — notice of lodging of declaration —

MR. KNUDSON: Okay. I don't have that.

MR. YOUNG: — like a signed declaration.

THE COURT: Well, I don't have a signed one either, but —

MR. KNUDSON: I don't have a signed one.

MR. YOUNG: I have it here.

THE COURT: Yeah.

MR. KNUDSON: Okay.

MR. YOUNG: There's a copy of —

MR. KNUDSON: All right. Assuming that he did sign that declaration, as shown in counsel's exhibit, it raises another question, because if we read Mr. Bank's declaration on paragraph 5, —

[7]

THE COURT: Yeah. I —

MR. KNUDSON: — all of a sudden now he said he took — he took $120,000, okay, but yet he said he settled for 95,000. If he received 10,000 before, then that's $85,000, but he took 120-, so now he owes us 35,000.

THE COURT: Well, I didn't understand exactly what he was saying, to tell you the truth. He —

MR. KNUDSON: Well, I wasn't sure either, but then I read it.

THE COURT: He said that —

MR. KNUDSON: He said he apparently agreed to take $25,000 less.

THE COURT: Well, —

MR. KNUDSON: And if that's the case, then he was entitled to only $95,000.

THE COURT: He didn't say how much he actually got in this declaration. In his declaration, he said that he agreed to

take $95,000 but he didn't say how much he actually physically got.

MR. KNUDSON: Well, no. We know what he physically got because the declarations already submitted before this Court show that he received $120,000, and the problem is, we've got so many hearings over so long a period of time, it's —

THE COURT: Yeah, no. But I have all the papers here.

[8]

MR. KNUDSON: Okay. It shows in his declaration that he received $125,000. Mr. Griffin's own statements before — and the exhibits show that he got $120,000. That's when I raised the $10,000 retainer, and then — and then he also says that he only received a thousand dollars. And as I pointed out and it's not covered by this declaration, there is another thousand dollars in his application signed under penalty of perjury that he said he received a thousand dollars in costs; that's not answered here either.

And then the next thing is we see a declaration of Tim Corliss, and there's a conflict there also.

Mr. Griffin's letter to Mr. Corliss said, listen, I paid you $4,000. Mr. Corliss faxes back, oh, by the way, I only received 3,000, so now there's another thousand dollars difference, okay?

Number 3. One of the things from a housekeeping standpoint — well, let me go to this —

THE COURT: All right. I don't think I have — I don't have a declaration of Tim Corliss. I have a —

MR. KNUDSON: Well, you have a — you have a fax back from him.

THE COURT: Yeah, I have a fax. It's not a declaration, it's just an invoice.

MR. KNUDSON: Yeah, he's — Mr. Griffin — that's correct. Mr. Griffin wrote him a letter on March 17th, said I [9] paid you a total of $4,000. Mr. Corliss replies back that he only received $3,000 not 4-, so now we've got a thousand dollar discrepancy, okay?

In the status report, we hear nothing about what happened to the funds that were supposed to be returned by debtor's counsel, and also we find out, and I'll comment at the end here about the late entry of the trust, and the incorrect ruling on the — we believe, regarding the trusts on your comments at the last hearing.

Incidentally, I ordered a tape last week when this started coming up, and I still have not received it. I have a feeling they're not sure where the tape is because —

THE COURT: The tape is in the Valley.

MR. KNUDSON: Yeah. They were trying to find out where that was.

THE COURT: I'll tell you, the tape is in the Valley; it's with my court recorder in the Valley.

MR. KNUDSON: Oh, I wonder —

THE COURT: I physically —

MR. KNUDSON: Because —

THE COURT: I physically carry them back with me when I leave here.

MR. KNUDSON: Yeah, I don't — because I got — tried to get one last week and I, you know, paid my fee but I still have not as of — as of actually yesterday —

[10]

THE COURT: Well, did you do that here or in the Valley?

MR. KNUDSON: Oh, I did it here. You have —

THE COURT: Well, they're not going to find it here, it's in the Valley. So, it's a matter —

MR. KNUDSON: Well, they were checking to see whether it was here or the Valley, and then they said they'd let me know.

THE COURT: Okay. I'm telling you where it is.

MR. KNUDSON: Okay.

THE COURT: I took it in my own two grubby little paws,

(Laughter)

THE COURT: — put it in my car, carried it to the Valley and handed it to my court recorder.

MR. KNUDSON: Okay. All right. I'll — I'll get that — or check with them.

THE COURT: Okay.

MR. KNUDSON: The other housekeeping thing we need to talk about is, we calculated Mr. Griffin's net income for 1994, and probably in the — in the rush to probably leave at the last hearing, we forgot to calculate his net income for '95, so that just needs to be done.

With regard to the retention of counsel for the trusts, I got faxed to me a 28-page document yesterday. I [11] haven't had time to read it.

THE COURT: Well, you're doing better than I did. I just had it handed to me.

MR. KNUDSON: Well, my comment is this, in general.

Everyone knew about this problem months, and months, and months ago, okay, and yet nothing was done. And now when we're getting ready to distribute funds, all of a sudden, with no disrespect to their counsel, all of a sudden appears and files a large document on the eve of this distribution when our — when just when we think in this case we're going to get it all wrapped up, we get another surprise, okay?

And I also had provided in my papers last time that the trusts — Mr. Griffin, in making his counter-arguments to mine, submitted documents that said, by the way, this will prove that the trusts are in fact creditors and, lo and behold, as I pointed out in my papers, they don't, okay. But the judge said, we're not even — Your Honor, you said we're not even going to get to that point because they did not file —

THE COURT: Right.

MR. KNUDSON: — a proof of claim, so we never got to my points, okay?

I have some very, very serious questions that border almost on fraud or maybe a bankruptcy crime in this case of the inclusion of these trusts.

Only did I learn when he filed those documents do we [12] find out that the Mabel Griffin Trust, which he claimed was the one that owed him money, we find out it was a — they have $175,000 they owe to somebody else not the trust. Pardon me, not the — not the estate of this debtor. And for them to come in at the eleventh hour with a 28-page document, first of all, I don't think it's properly before the Court, and it certainly

wasn't given out to — certainly it would be Class 2.1 creditors, certainly they'd be impacted because they're sharing on a pro rata basis with the rest of us.

And so this case just keeps getting muddier, and muddier, and muddier as we go along. Mr. Banks' situation certainly isn't cleared up. Matter of fact, if anything else, it's more muddy.

And he doesn't say in his declaration anything about the other thousand dollar cost and now we find out he settled for less money, and when the documents before the Court that have been submitted as exhibits as to the allocation of that money from Cancienne in settlement, we find out he took 120,000, now he said he only took 95-, so who knows.

You know, I think that probably that we need to have Mr. Banks come down here and we need to put him on the stand or let him do his own declarations. It looks like — for me, from my standpoint, it looked like somebody did his declaration for him —

THE COURT: Well, okay. I —

[13]

MR. KNUDSON: — rather than him doing his own.

THE COURT: Let me ask a basic question here first. Let's get back to the trusts for a minute, Mr. Huffman.

MR. HUFFMAN: Yes, Your Honor.

THE COURT: Obviously I haven't had a chance to read this, just sort of looking through it, but I'm taking a look at page 5 of your brief, —

MR. HUFFMAN: Okay, Your Honor.

THE COURT: — line 14.

MR. HUFFMAN: Page 5.

THE COURT: And you're saying that the debtor himself is also the trustee of these trusts?

MR. HUFFMAN: That is correct, Your Honor.

THE COURT: But you're claiming that the trusts didn't have adequate notice because the debtor didn't put down a proper address for himself? Is that — is that the whole theory here when I get down to it?

MR. HUFFMAN: Not the whole theory, no, Your Honor.

THE COURT: Well, what is your — what is — in a nutshell, what is your theory?

MR. HUFFMAN: Well, Your Honor, —

THE COURT: Because it looks like that's what you're arguing is that proper notice wasn't given because they weren't properly served, but the debtor himself is the trustee and certainly he had notice of the bar data because he's the one [14] that set it. It's a Chapter 11 debtor-in–possession case, —

MR. HUFFMAN: That's right.

THE COURT: — so I'm not sure what other notice is necessary.

MR. HUFFMAN: Well, Your Honor, which brings up another interesting point, is because of the informal claim, the nature is that the 9th Circuit liberally construes.

THE COURT: Well, there can be informal claims, but what is the — again, just — you know, there is all these pages and all of this — these cases. What is the informal claim here? Tell me what's the document that was served that notified the debtor — that notified the world, remembering now that the

debtor himself put this down as an unliquidated claim. He didn't have to. He could have put it down as — as just a claim in a set amount and that would have done it. But what is — what did the trust file that notified the other creditors, the United States Trustee and me that they had — really had a claim?

MR. HUFFMAN: Okay. Let me back up a second.

THE COURT: Yeah.

MR. HUFFMAN: And then I'll get to the — answer Your Court's question.

The debtor listed every creditor in Schedule F as unliquidated.

THE COURT: Yes. That wasn't very proper, was it?

[15]

MR. HUFFMAN: It was not proper, Your Honor, when — liquidated and unliquidated is not defined in the code, but it's generally understood that if a claim is capable of being determined by simple math, it is not unliquidated.

So, all the claims — I mean, all of the creditors listed in the Schedule F were not unliquidated; they were all liquidated.

THE COURT: No, but they were required to file a proof of claim or they couldn't participate. Isn't that true?

MR. HUFFMAN: Well, Your Honor, if the debtor by mistake listed something as unliquidated when in fact it is not an unliquidated creditor, it is in fact a liquid — a liquid creditor, then the debtor made a mistake, the creditors should not have to bear the brunt of the debtor's mistake.

THE COURT: So, you're —

MR. HUFFMAN: Second —

THE COURT: — you're arguing that now, what, two years after confirmation, five years after this case was filed, that we're supposed to go back and reopen the schedules and let him do amended schedules putting everybody down as — as liquidated, noncontingent and undisputed?

MR. HUFFMAN: No, Your Honor, because —

THE COURT: And then we'll go back and we'll redo the plan and we'll take a look at who hasn't filed a proof of claim and we'll include them now in the case, and then we'll re-vote [16] the plan, and then we will — is that — that's what you're suggesting. That's the only thing I can say you're suggesting because why would —

MR. HUFFMAN: No. No, I'm not, Your Honor.

THE COURT: — why would we give —

MR. HUFFMAN: I'm not —

THE COURT: Why would we give preference to only one claimant, or in this case two claimants who happen to be insiders, why would we give preference only to them and not to everybody else?

MR. HUFFMAN: Your Honor, it's basically because ultimately we're — I'm going to get to the *Celotex* decision, and the United States Supreme Court says that once the — once an order is final and it's not been appealed, it is the order and has to be respected by everyone.

Your Honor entered an order approving and confirming the debtor's first amended plan. I believe it's first amended. Mr. Knudson, on behalf of his clients, raised on objection to that disclosure — I mean, that plan and he successfully got his clients inserted into Class 2.2. No one ever objected that the trust should not been included in Class 2.2. Class 2.2 — the plan went out to the world. No one objected.

Once Your Honor entered her order confirming the plan with the interlineations requested by the objecting creditor, it was fait accompli after that, Your Honor. No one appealed [17] it. It is the law of the case and therefore, unless someone properly attacked it, it's too late. And in *Celotex* at 115 Supreme Court 1493, at 1501, the Court stated:

> "We have made clear that it is for the Court of the first instance to determine the question of the validity of the law and until its decision is reversed for error by orderly review, either by itself or by a higher Court, it's orders based on its decisions are to be respected." And then there are citations.

"If respondents believed the Section 105 injunction was improper, they should have challenged it in the Bankruptcy Court" — and I'm on — reading on page 15 of my brief, Your Honor. The objectors did not object. The case is final as to the inclusion of who is in the plan.

THE COURT: Well, it's an interesting argument.

MR. HUFFMAN: The *Celotex* Court went on at 1498, reading from my brief on page 16, line 1:

> "We have reaffirmed the well-established rule that persons subject to an injunctive order issued by a Court with jurisdiction are expected to obey that decree until it's modified or reversed even if they have proper grounds to object to the order."

[18]

No one's ever done it. The case became final. The confirmation became final. They even had six months after the confirmation to move to set the order aside. They didn't do that either.

Your Honor, —

THE COURT: Well, it's an interesting argument. I don't have a copy of the confirmed plan here, so I can't look at it right now. And, of course, all these, it was just given to me.

MR. HUFFMAN: Your Honor, I have the plan here.

THE COURT: Okay. Well, we can look at it.

MR. HUFFMAN: Do you want me to bring it up?

THE COURT: Sure.

MR. BREGMAN: Your Honor, at the risk of interrupting the flow of argument, I would request to be — to be able to leave for about 20 minutes and then come back. Does the Court see a problem with that? I have an exigent matter I need to attend to.

THE COURT: I don't know. Are we going to be another 20 minutes? Okay. Go ahead.

MR. BREGMAN: Thank you very much.

MR. YOUNG: It depends really on what happens. I understand Mr. Bregman's problem. He had mentioned it to me earlier. He's got an emergency filing with a foreclosure at 11:00 o'clock, and I said I'll stand in for you if you wish, if [19] it's just for continuing anything.

THE COURT: Well, you know, I mean, Mr. Bregman, I'm probably going to end up just continuing your thing or something, so if you're not back, well, we'll deal with it. We know you're around.

MR. BREGMAN: Thank you very much, Your Honor.

MR. YOUNG: We'll let him know.

MR. HUFFMAN: May I approach, Your Honor?

THE COURT: Yeah.

MR. HUFFMAN: One of them is the order confirming and the other one is the second amended plan.

MR. MAROKO: Your Honor, if we're not either entering a final decree today or converting the case to Chapter 7, may I be excused?

THE COURT: Oh. Well, I guess we're not going to convert it to a Chapter 7 today because the person who wants it — who brought the motion doesn't want it to be heard today. So, I guess that that's — that's a given. I mean, I'm tempted to dismiss the whole case but that's another issue.

MR. MAROKO: Okay. If we're going to dismiss, then I will remain.

THE COURT: No, I don't know. I probably won't do that today either.

MR. MAROKO: Because our only interest is making sure that the debtor pays its quarterly fees at this point.

[20]

THE COURT: Well, we won't — we won't worry about that right this second, so —

MR. MAROKO: Okay. May I be excused then?

THE COURT: Okay. Sure.

MR. MAROKO: Thank you.

(Pause)

MR. YOUNG: I wonder if I might speak just briefly when Your Honor desires.

THE COURT: Okay. When I'm ready. Let me look at this.

MR. YOUNG: All right.

(Pause - Judge reviewing document)

THE COURT: Well, let me ask you a question here.

MR. HUFFMAN: Yes, Your Honor.

THE COURT: I'm looking at page — well, I'll have to give this back to you, but I'm looking at page 25 of the second amended plan.

MR. HUFFMAN: Yes, Your Honor.

THE COURT: And it says a total amount allowed — it says, "The following claim holders are members of this class," okay? Then it has the three, Trust Estate of Gus Griffin, $250,000, Trust Estate of Mabel Griffin, $175,000, Marathon National Bank, $27,556.08. "Total amount allowed claims, okay, $452,556.08, plus accrued interest and other charges, based upon a proof of claim to be filed in this case."

[21]

Now, have you — has anybody ever filed a proof of claim?

MR. HUFFMAN: A formal proof of claim, no, but Mr. Griffin regularly received statements from — as to the amount of money that was owed to the trust. He was in control of the trust, so he had actual knowledge of the trust. And as Judge Ryan said in — I think it was *Day Star,* that probably is sufficient.

THE COURT: Well, I don't think it's sufficient, and I'll tell you why.

When you identify the three creditors, you're just naming them. These are claim holders. You don't say they're allowed claims, you just say they're the claim holders, and, of course to be paid, you have to be an allowed claim. Then you define what's going to make the amount of the allowed claim, and it's going to be based on a proof of claim to be filed in this case.

Now, a proof of claim is a public document. It can be objected to by the debtor or by any other party in interest that the Court grants — grants the right to object to it.

Now, these claims have never been objected to because they've never been filed. It's all well and good that Mr. Griffin knows what's going on, but certainly nobody else has access to that, and he hasn't — he has not, or the trust, and he is the trusts, have not complied with this plan, [22] and here we sit two years, three years later and there still hasn't been a proof of claim filed here.

MR. HUFFMAN: Well, —

THE COURT: And so, you know, you want to say, well, listen, if you have to stick by the plan, well, you know, and you're probably correct on that, but he hasn't stuck by this plan.

You can come up and get this now, if you wish.

(Pause)

THE COURT: So, we don't have any proof of claim, formal or informal here. All we have is an instruction in the plan that in order to be an approved claim, they have to file a proof of claim that tells us how much and they haven't done that.

MR. HUFFMAN: Your Honor, I would — I'd like to quote from Judge Ryan's ruling in *Day Star of California,* 122 BR 406, 1990 case, pages 408 to 410, set forth in my brief on page 17.

"The purpose of the proof of claim is to alert the Court, trustee and other creditors, as well as the debtor to claims against the estate." That's a given, okay?

"Whether a claimant must file a formal proof of claim against the estate depends upon the chapter," and then it goes

on to say Chapter 7. "If it's listed as unliquidated, it must file a proof of claim."

[23]

And the 9th Circuit test for determining existence of an informal claim requires a showing of an explicit demand stating the nature and amount of the claim against the debtor's estate and intent to hold the estate liable.

We have the trustee of a trust and who is also a debtor-in-possession. He's wearing four hats, his individual debtor hat, he's wearing a fiduciary duty hat of the — of a debtor-in-possession, he's hold two hats for fiduciary duties to both trusts.

Then Judge Ryan goes on to say, "There must have been presented within the time limit by or on behalf of the creditor some written instrument that brings to the attention of the Court the nature and amount of the claim."

Going on to the next page, he talks about how broadly or narrowly intent is read, and the 9th Circuit has historically demonstrated great flexibility in this area. And Judge Ryan quoting from *Anderson vs. Walker,* 798 F.2d 1285 at 1287, the Court stated, "Our cases have consistently applied the so-called rule of liberality in amendments to creditors proofs of claim."

And Judge Ryan goes on to address the rest of it about informal claims —

(Off the record - technical problem)

(Call to Order of the court)

THE COURT: Now, okay, Please be seated.

[24]

So, Mr. Huffman, now we were back to — you were saying something, but you probably don't remember what it was at this point.

MR. HUFFMAN: I'm not sure when the machine cut off but I was discussing the — Judge Ryan's decision in —

THE COURT: Right. You were reading me parts of it and discussing. I think you'd gone through that.

MR. HUFFMAN: Yeah, *Day Star*. And, Your Honor, I believe like in *Day Star* where informal invoices had been sent to the debtor so the debtor knew that Day — the debtor knew that the creditor was seeking these money, Judge Ryan said, "Accordingly, I hold these invoices were sufficient to place the bankruptcy estate on notice that it was liable.

In this particular case, Mr. Griffin knew that he is liable to the trust for the $250,000 to his father's trust and the $175,000 to his mother's trust, and whether or not that $175,000 is to that trust or to another trust or another entity, which would raise a total new issue with respect to whether they even had any notice of the bankruptcy, but in any case, the $175,000 and the 250-, I believe the informal claims have been filed. Basically, the trust voted on the plan, so everyone knew that they were still — were pursuing their rights.

Your Honor, I think everything points to that the trust have filed a — what amounts to an informal claim and [25] have pursued their rights, including filing their ballots in favor of the plan.

So, with that, Your Honor, I think that the Court should find that seeing that Mr. Griffin had knowledge of the obligation, had actual documents of the obligation, he's in fact the one that created them, that the estate was definitely on

notice and the — the trust voted for the plan, they definitely showed their intent to continue pursuing their rights.

And therefore based on all the cases that I've cited in my brief, including the *U.S. vs. Energy Resources* where the Supreme Court said that the Court could use 105 to do whatever the Court had to do in furtherance of the plan, and the United States Supreme Court also has indicated on numerous occasions of the favor of the reorganization process, and the fact that the debtor inadvertently listed all of his Schedule F creditors as unliquidated, I believe that that portion of it should be stricken out because both Mr. Griffins have said that they misunderstood what unliquidated meant.

Thank you, Your Honor.

MR. YOUNG: May it please the Court. As the debtor's attorney, I'm in somewhat of a perplexing position. I don't feel we have received in my office all of the data that the Court required, all of the figures and receipts from the various suppliers in the Cancienne case. For example, the — there were items, 11 on — on lines 11 to 14 on page 2 of the [26] Griffin declaration that were cost items that we have never received from the suppliers of those cost items, while we have written to him.

I see that the trust probably has a right to have their position litigated and the creditors who want to oppose it have a right to be heard and perhaps even a right to brief on it; then I see whoever loses is probably going to appeal because it's a lot of money, and I, as the attorney, will probably be here until Christmas or next spring, probably not getting paid but we do our job anyway whether we're paid or not because that's our obligation as attorneys.

I'm wondering if the Court would consider one of two proposals I might put forth. One is that we just set aside that

money for the trust, pay the Class — 2.1 class, 2.2 people pro rata, deducting the trust money until that's decided on appeal a year from now, or six months from now or three months from now, or we just plunge in and dismiss the case and let the parties pay these two creditors and handle it, —

THE COURT: Well, that was —

MR. YOUNG: — since all of the other problems have really been handled through the protection of the Bankruptcy Court during the last year.

I guess I'm throwing my hands up and saying, My God, what are we into now.

THE COURT: Well, what I don't understand, why is it [27] that the creditors, other than the Beumer Trust, don't want this case converted?

MR. YOUNG: Oh, I don't think a conversion is necessary.

THE COURT: Well, let's start with that. I got an opposition to conversion here.

MR. KNUDSON: I think I — I believe, Your Honor, that I indicated in my opposition papers the reason for that, to —

THE COURT: I really didn't get all the way into the opposition papers because you started by saying, well, assuming that the property isn't given back to the Beumer Trust, then —

MR. KNUDSON: That's correct, because —

THE COURT: — and since I had a statement by Mr. Young that the property had been given back to the Beumer Trust, —

MR. KNUDSON: Well, no, —

THE COURT: — I figured, okay, that was the end of that discussion and I stopped because I had other things to do.

MR. KNUDSON: Oh, that was — no, okay. Then that — quite frankly, Your Honor, with no disrespect, you've got it in reverse, because it was at that — this last hearing that Mr. Griffin, through his counsel, orally said that he would give the property back.

[28]

THE COURT: Right.

MR. KNUDSON: Okay. And then we — and then I called —

THE COURT: No, no, no. What I — what — I'm sorry. I don't want —

MR. KNUDSON: Oh, this is before I filed my opposition. I —

THE COURT: No, no. What — the opposition that I got said —

MR. KNUDSON: Was before the status report.

THE COURT: Right. But the opposition that I got said — said if the property is given back to the Beumer Trust, their motion to convert is moot; therefore, you know, you don't have to read the rest of this paper, but if their motion isn't, then go keep reading. Well, I knew it was given back so I —

MR. KNUDSON: Well, I say, —

THE COURT: — didn't read the rest of their papers, is what I'm saying.

MR. KNUDSON: — maybe you knew that, but I didn't know that.

THE COURT: Well, okay. But now —

MR. KNUDSON: Okay. I —

THE COURT: — so I haven't read —

MR. KNUDSON: — assumed that it was going to be given back. As a matter of fact, I —

[29]

THE COURT: So, just give me a nutshell because I haven't read it.

MR. KNUDSON: The nutshell is that if this case is converted, —

THE COURT: Yeah.

MR. KNUDSON: — my clients, as well as the other — other creditors of this estate, will, upon conversion, be subordinated to — behind —

THE COURT: The Chapter 7 expenses.

MR. KNUDSON: Well, no, to any post-petition Chapter 11 expenses or Chapter 11 creditors.

THE COURT: Okay. All right. So, —

MR. KNUDSON: And so then, you know, —

THE COURT: — I understand your position.

MR. KNUDSON: — so that we may not get anything.

THE COURT: Okay. Let me try something else. What if it's dismissed?

MR. KNUDSON: Oh. Well, then if this case is dismissed, this debtor has succeeded.

THE COURT: I agree. Okay, I agree with that. Now the question comes, who's going to carry the laboring oar here?

All right. This thing with the trust, you know, it can be litigated. I guess it has to be litigated. But as far as where the equities are, the equities are not with the Griffins, the equities are with everybody else.

[30]

Among other things, if you're your own attorney, even if you're an attorney being your own attorney, you know that they say he who has — he who is his own attorney has a fool for a client?

MR. HUFFMAN: Yes, Your Honor. I'm aware of that.

THE COURT: They did what they did. If everything was marked unliquidated, bad faith. If they don't check out what it means, stupidity and bad faith. If Mr. Griffin writes his plan — he did it with counsel, but he certainly read it, and he's an attorney that understands it. I'm sure he had some part in writing it. But even if he didn't, he signed it, he's the attorney. And if it says that a proof of claim has to be filed and a proof of claim isn't filed, where's the equities? So, the equities are not with the Griffins on this.

Now, what that's going to mean, I don't know. I'm just telling you that — where it stands right now on that particular issue.

What I have before me is a motion for final decree, and an OSC why this case shouldn't be dismissed or converted, and a tremendous amount of frustration that we're taking a huge period of time trying to figure out some really rather simple things, and the fact that Mr. Griffin had to be brought to this

Court to try to finalize this case with a series of orders and hearings, nothing was done. He hasn't carried through as a debtor, as a reorganized debtor should have.

[31]

And so one of the questions that I have here, and I don't know the answer, is I don't think conversion is the right way to go, I don't think dismissal is the right way to go, but I sure as heck would like somebody in here who would get all of the information. I mean, I don't' even know — maybe I can appoint an examiner to this case at this point to get all of this finalized.

MR. YOUNG: I think, though, if I might interrupt, or at least interject, letters were sent out for some of the information and hadn't been returned yet by the receivers of the letters. It may be that we just have the subpoena them. As Your Honor had originally said, subpoena them to court, —

THE COURT: Well, —

MR. YOUNG: — put them on the stand if they won't sign a declaration.

THE COURT: But he — why did — I mean, why does Mr. Griffin — he gives me his own declarations which are wrong, he doesn't tell me about the deal with his State Court counsel. He doesn't do anything on this case until he's forced into it. Why should I trust him? Why should I believe him?

MR. YOUNG: Some of it is not a matter of trust. I think —

THE COURT: I think it's a matter of trust.

MR. YOUNG: — it may be a matter of his getting on somewhat in years, too.

[32]

THE COURT: Well, you've got his son there, and I'm taking a look at him, and I'm sorry, he's not that much further beyond in years than the rest of us in this room. If he is, it's — I don't think he's further on than many of us that are in this room, okay?

So, that's not — that's not an excuse. And that's even more of an excuse why he shouldn't be in control.

MS. JAY: Your Honor, may I interject a comment in response to the Court's comment that the trusts need to be liquidated?

I would say — litigated. I would say absolutely not.

THE COURT: I didn't say they needed to be litigated. What I said was —

MS. JAY: Oh, good.

THE COURT: — that right now they're in the plan. I've got a motion for final decree, but I don't have — I don't have any motion by anybody to determine that they shouldn't participate.

MR. YOUNG: Oh, yes, you do.

MS. JAY: Yes, Your Honor, you do. I believe that one of the motions by the debtor was — or some declaration in support of distribution, and in that motion or application —

THE COURT: Oh, well, on that — that I can say don't distribute. That's easy. But I don't — I don't know whether [33] I have actually a motion to distribute. There's a motion for final decree, which of course I can deny. It doesn't get us anyplace. This is a —

MS. JAY: Your Honor, if I —

THE COURT: This is to approve payments under the plan, but I don't know whether it's actually a motion for payment under the plan.

MS. JAY: I think that the motion —

THE COURT: Or is that part of the final decree? See, in other words, there may not actually be something here. I'm just looking procedurally.

MS. JAY: Procedurally. Maybe I misunderstood, but I thought that it was for final decree and for approval of payments under the plan.

THE COURT: I don't know.

MS. JAY: I believe that payments under the plan should be approved. I think it's clear from the face of the plan itself that in order for the trusts or anyone else in that class to participate, they had to file a claim. I think it's clear that a claim was not filed, and what only remains is whether or not an informal claim qualifies.

The Court has, three times I believe today, requested identification of the document that equals the informal claim and there's been no response whatsoever, because I don't believe any such document exists.

[34]

So, it seems to me that clarification of distribution without the trusts or any other creditor that didn't comply with the plan —

THE COURT: I don't have any motion. Again, all I have here is, I have a motion — notice of motion and motion for final decree, it's not and for distribution or something. And there may have been something else filed that I don't have with me anymore.

MR. YOUNG: If procedurally we need to do that, we'll promptly do that.

THE COURT: Okay. So, I mean, —

MR. YOUNG: If it's called a motion for —

THE COURT: — procedurally, I have nothing to rule on on the trust right now except to deny the motion for final decree because I'm not going to allow that payment to go out.

MR. KNUDSON: Of course, —

MS. JAY: Your Honor, there is a document that I was — received. One of them was called "Declaration of Harold Griffin for use at hearing to approve payments under the plan."

THE COURT: Well, that's a declaration, that's not a motion to approve payments. I have that.

MS. JAY: It didn't go with a motion?

MR. KNUDSON: No, no. I —

THE COURT: I don't think so. I think it's just part of the final decree motion; that's what I'm saying.

[35]

MR. KNUDSON: Yeah. I think —

MS. JAY: Okay. No, then you're —

MR. KNUDSON: I think the Court is correct, Your Honor.

THE COURT: Yeah.

MS. JAY: I didn't — I misunderstood, Your Honor.

MR. KNUDSON: I would point out, however, for the record is that when we're talking about the distribution, it was a distribution who should be distributed those funds as opposed

to exactly how many dollars they should be allocated, is that I made an opposition or filed an opposition and I raised — many months ago, many, many months ago the issue of the trusts. And Mr. Griffin, in response to that opposition, filed his papers, his declaration in which he said in fact the trusts are in fact creditors and, here, I'm going to attach two documents as exhibits proving that they are. And lo and behold, as I point out in my papers, they're not, okay?

So, we have an — you know, we never, — we may never get to the issue of whether they are entitled to file any claims whatsoever, even assuming under the worst circumstances that they're able to do so, nothing — and I just scanned opposing counsel's papers for the trust, nowhere in there does he show us that the trusts are in fact creditors.

Matter of fact, Mr. Griffin's declaration, again under penalty of perjury, shows us that, for instance with [36] regard to Mabel Griffin — which incidentally opposing counsel says these debts were incurred in '91, yet the papers, his schedules show '92, it's 175,000 for the Mabel Griffin Trust and for the other trust, it's 250-, the numbers are reversed in counsel's pleadings — that we find out it's a deed of trust to somebody else.

So, you know, as I've said before, this raises some real serious credibility issues with me and it should with the Court.

THE COURT: Well, it does, I mean, the whole thing —

MR. KNUDSON: I mean, he — if he's saying here's the evidence, and as I point out, well, the documents speak for themselves, and you're providing the Court and myself with this proof under penalty of perjury and we find out that, basically as far as I'm concerned, he lied when he included — at least no question about it, as far as my mind in terms of the documents, he lied about the inclusion of the Mabel Griffin

Trust as a creditor of this estate. Because the documents, and they happen to be a recorded deed of trust, was between the trust and — I forgot who, it was some person — somebody starting with a last name starting with an "m," I don't recall, and that was his — that was his support for his position.

Matter of fact, the counsel today in his brief nowhere provides anything to us that they are in fact creditors [37] even entitled to file a proof of claim, and number —

THE COURT: Well, I'm not — what document are you looking at? Because — about this, because I'm looking at the declaration of Harold Griffin, which is really more of a points and authorities. This is in the brief by Revocable Inter Vivos Trust of Mabel Marie —

MR. KNUDSON: Which —

THE COURT: The one that was just handed to me by Mr. Huffman.

MR. KNUDSON: I'm sorry, Your Honor?

THE COURT: The one that was just handed to me by Mr. Huffman.

MR. KNUDSON: Oh, I don't know.

THE COURT: Well, I don't know what you're looking at.

MR. KNUDSON: Oh, I'm just — I'm just talking about an earlier document.

THE COURT: Oh, okay. Well, let's — well, I'm looking —

MR. KNUDSON: Yeah. And the document that counsel filed for the trusts is also inaccurate.

THE COURT: Well, the document that was filed here, the declaration of Harold E. Griffin —

MS. JAY: I believe counsel is referring to Exhibits E and F of that declaration.

[38]

MR. KNUDSON: Oh. Oh, you're looking at the — you're looking at his — the trust —

THE COURT: Yeah.

MR. KNUDSON: Yes, if you're looking at Mr. Griffin's declaration —

THE COURT: I don't have — I don't have an E and F. Wait, wait, wait.

MR. KNUDSON: Well, — well, this is a different —

THE COURT: Okay. I've got to know that —

MR. KNUDSON: I'm confusing —

THE COURT: What — let me — slow down. Let me look at what I'm looking at —

MR. KNUDSON: Okay.

THE COURT: — and you can show me what you're looking at.

I'm looking at the document Mr. Huffman just gave me.

MR. KNUDSON: Okay.

THE COURT: Okay.

MR. KNUDSON: I am pointing —

THE COURT: Now, there's a declaration there of Harold Griffin, Sr., and a declaration of Harold Griffin, Jr., and —

MR. KNUDSON: Okay.

THE COURT: — basically what — most of the declaration is simply a restatement of the plan.

[39]

MR. KNUDSON: Right.

THE COURT: And then it just says basically, I knew about the trust. Well, of course he knew about the trusts. How could he not, he was the trustee. And he says here, and this is part of what got — on paragraph 17, page 26:

> "I filed my motion for a final decree and to approve certain disbursements. The hearing was originally scheduled for February 20, 1997 and continued to April 1, 1997."

Well, that's not what I have. The motion for a final decree was actually originally set for hearing on July 3rd, 1996, and there did — it was not, at least in its caption, a request for disbursements.

So, maybe there's something else filed later that he's referring to, I don't know, but this stuff certainly doesn't have a request for disbursements in it.

MR. YOUNG: Your Honor, am I understanding then, what we should have done or should do is a motion for disbursements according to plan?

THE COURT: Well, we have to get there first. I haven't gotten there.

MR. YOUNG: All right.

THE COURT: All right. So, this declaration doesn't say anything about his relationship to the trusts, okay? It [40] doesn't say anything about the trusts or the trusts' claim.

MR. KNUDSON: Right.

THE COURT: Now let's take a look at what you are trying to refer to. What is it? What document are you looking at?

MR. KNUDSON: Well, the document I'm looking at is a document —

THE COURT: Entitled?

MR. KNUDSON: — entitled "Declaration of Harold Griffin for use at hearing to approve payments under the plan."

THE COURT: Right. Okay. That was filed —

MR. KNUDSON: And that was February 20th —

THE COURT: — January 30th, 1997.

MR. KNUDSON: That's correct. And it was for the hearing February 20th, 1997.

THE COURT: Okay. Now you want me to look at Exhibit E of that document, is that correct?

MR. KNUDSON: Yes. Look at Exhibit E and F.

THE COURT: Okay.

MR. KNUDSON: And —

MR. HUFFMAN: Might I inquire what E and F are, because mine aren't marked.

THE COURT: Well, they're marked but they're not very easily marked.

MR. HUFFMAN: Oh.

[41]

THE COURT: They've got a page in front of them. It's a summary of assets, okay, is E. And F is a deed of trust made by Harold E. Griffin as trustee for Mabel Marie Griffin, and the beneficiary is Howard Mardennis — Madernis.

MR. KNUDSON: Right.

THE COURT: Okay. And that's in the amount of $175,000.

Okay. So, the trust owes Mr. Madernis $175,000. What's that got to do with Mr. Griffin?

MR. KNUDSON: That was my point in my opposition, among others. And the other one was that in E, it doesn't show that there — that the trust owes — or is owned the amount — or the estate owes the amount to Mr. Griffin either.

(Pause)

MR. KNUDSON: Can you bear with me a minute?

THE COURT: Yeah, sure.

(Long pause)

THE COURT: Okay. So, what I have so far, besides the fact that we never had proofs of claim filed, and even in the Day Struck or whatever the name of the case is, Judge Ryan notes that a proof of claim isn't just for the debtor's benefit, it's for the benefit of the court and the creditors. And all of these — had a proof of claim been filed, then all of these documents would have been attached or certainly would have been subject to objection.

[42]

And so all I have here is, I have a deed of trust to a third party and I have a summary of assets showing that payments

were made, although I'm not sure what that means, because it says amount received — and this is Exhibit E, and that doesn't mean amount given, and then you have total credit, and you — you don't have any dates.

There is no indication of who the monies went to, what they were for, and, you know, I don't understand what penalty means. I mean, I can take a guess at it, but I don't understand what it means. There is no showing of paybacks. I can't tell what's happening here.

So, to say it's a sketchy record is an understatement, right.

MR. HUFFMAN: Your Honor, I think that if the trust has an opportunity, we will present to the Court all the documents relating, including all of the accountings, all the cancelled checks, all the promissory notes, and et cetera, to this Court so that the Court can pass a scrutiny on same.

THE COURT: Well, I think you're going to —

MR. HUFFMAN: Additionally, —

THE COURT: You're going to have to do that. Now, whether or not I'm going to deem that as a claim at this point in time is something I'll have to decide, okay, —

MR. HUFFMAN: Additionally, Your Honor, —

THE COURT: — because we're still — we're three [43] years after this plan was confirmed, okay.

MR. HUFFMAN: I understand it, Your Honor, and with respect to — going back to *Day Star of California,* Judge Ryan's decision that you referred to a moment ago, Judge Ryan found that the invoices had only been sent to the debtor-in-possession, they hadn't been sent to the Court.

THE COURT: But you — you know, counsel, we can — we can knock this one to death. In *Day Star,* the debtor-in-

possession was not the creditor, okay? In this case, the creditor and the debtor-in-possession are the same — are in the same person because he as the trustee has the responsibility on behalf of the beneficiaries of the trust. *Day Star* is a completely different situation.

It's not what we have here. Of course he knew from day one exactly how much is owed and exactly what happened; that's not the question. The question is whether anybody else knew, and whether or not I, at this point, under any power, should give him the benefit of the doubt in the fact that he hasn't complied with a plan that he presented, that he created. And the last time I looked at the way you interpret documents, contracts, and the plan is a contract, or other legal documents, is you construe them against the person who drafted them. He drafted it and he hasn't complied with it.

Now, there is nothing before me today to go any further than to say that, but that is where I am right now.

[44]

Now, let's move on. I've got some other problems here.

MR. HUFFMAN: Okay, Your Honor.

THE COURT: So, somebody help me out. I mean, tell me how we can end this. I would — I mean, you don't want it dismissed, you don't want it converted, I can't appoint an examiner because it's after confirmation, and I'm getting tired of — of spending court time and everybody else's time trying to figure out exactly what was owed and things that we should have had before we got this declaration of Mr. Griffin, the work that he should have done.

MR. KNUDSON: Your Honor, I have two quick comments, Your Honor.

It seems to me that opposing counsel and his client, albeit not how I would do it, have attempted — first of all, let's talk about Mr. Banks' problem, okay, to get some of these accountings, okay?

Obviously Mr. Banks is just sitting back and sandbagging. As much as I hate to say it, Mr. Banks, unfortunately I think, will probably only understand the two-by-four approach, and that is we need to bring him into court because he's wasting my time, the Court's time and everyone else's time.

And now especially with this new revelation that he got $95,000 and yet — and I went back and looked at some of [45] the old documents that shows that he got — that he was paid $120,000, so he owes us some money, okay? Enough of fiddling around with him, let's get him into court and order him in here, okay?

THE COURT: So, somebody subpoena him.

MR. KNUDSON: Okay. Then my suggestion is, is that debtor's counsel subpoena Mr. Banks.

I thought when we were looking at the — when we were looking at the costs amounts, I didn't think that we — although I — again, I have not got the tape — I didn't think that anybody was complaining about the cost. I raised the thing again with Mr. Banks about the other thousand dollars.

I don't think we had — the other costs, I don't think we were complaining about, except now I find out there's another cost, that Mr. Griffin is claiming he paid Mr. Corliss $4,000, Mr. Corliss faxes him back and said you only paid me 3-, so now we've got another thousand dollars.

I thought we only had to make one correction and that was a typo, all right. I thought — in terms of the cost, I thought we were okay.

THE COURT: I thought so. Apparently we're not, are we?

MR. KNUDSON: Well, I think we are except for that — you know, we've changed the typo, and now we find out that maybe Mr. Griffin and Mr. Corliss now have a dispute; that's [46] now new before the Court. And then we still have the recurring problem since last year with Mr. Banks, okay.

THE COURT: Well, who's going —

MR. KNUDSON: Other than that, —

THE COURT: — who's going to do something, —

MR. KNUDSON: — I think the —

THE COURT: — because like I said, I —

MR. KNUDSON: Well, here is my suggestion is that I think that Mr. Griffin, with regard to Mr. Corliss, should provide us the checks, okay? If he only paid him — if he paid him $4,000, he paid him $4,000.

THE COURT: Well, I kind of assumed that he should have done that already.

MR. KNUDSON: Well, we never knew about — I never knew about Mr. Corliss. Maybe he —

THE COURT: No, no,

MR. KNUDSON: — he was under expert witness fees, apparently.

THE COURT: What I mean is that —

MR. KNUDSON: I didn't know Mr. Corliss was his expert witness, and if they've got the cancelled checks for —

THE COURT: This fax — this fax was sent back to Mr. Griffin on March 20th, 10 days ago, 11 days ago. I assume Mr.

Griffin can read, okay? So, the fax that he got 10 days ago shows that there is only $3,000 accounted for. Where's the [47] cancelled checks? Why aren't they in court today?

MR. KNUDSON: Yeah, there's a — yeah, there's a thousand dollars missing.

THE COURT: Right. I mean, he got this back. He sent a letter on March 17th saying $4,000, and he gets back showing $3,000, so why — why is he here today without the cancelled check showing it was $4,000? And so speaking of sandbagging. Maybe Mr. Griffin likes to spend his hours sitting around this court, but I'm not too happy having him here.

MR. KNUDSON: Oh, I think that that would be taken care of by the fact that we — the Court order Mr. Griffin to provide the cancelled checks to Mr. Corliss and then we have the only — as far as I'm concerned, I don't speak for other counsel, I think the other costs were — as I recall, there was just that one correction, as the Court I think correctly points out, that it was a typo. And then we're — the only — we have Mr. Banks and now — now a new one in Mr. Corliss, but that's easily resolved, but Mr. Banks seems to be the sticking point.

The only other thing I would point out that was in the status report that was actually not in the status report was whether opposing counsel for the debtor has returned the funds that the Court indicated that he should to the — to the settlement proceeds. Other than that, I think that in terms of dollars everything are — are okay.

[48]

MR. YOUNG: I think Mr. Knudson misinterprets the Court ruling.

MR. KNUDSON: With regard to what?

MR. YOUNG: You're saying the attorney for the debtor should return attorney fees to the estate; that was not the judge's ruling. The debtor must replace those fees into the estate. When you get the tape, sir —

MR. KNUDSON: Well, I don't know. I haven't got the tape — or was that your words?

THE COURT: Oh, I haven't the foggiest idea.

MR. KNUDSON: Oh. Well, I'll have to get the tape.

THE COURT: Okay. But I — we're still trying to figure out how much Mr. Banks got, right?

MR. KNUDSON: Yeah. It's now confusing —

THE COURT: Okay.

MR. KNUDSON: — because that — that declaration —

THE COURT: Well, shall we try him by — we didn't get him last time I tried him by phone. We can try one more time.

MR. YOUNG: I would suggest, Your Honor, that —

MR. KNUDSON: I want him down here under penalty — I want him under oath.

MR. YOUNG: If it appears that the proper title and vehicle is called a motion for distribution of funds, is that what we're calling it, from the —

[49]

THE COURT: Oh, I don't know. It's just that nobody has brought anything —

MR. YOUNG: I thought that that's —

THE COURT: — and I'm not about to grant a final decree.

MR. YOUNG: — what we were doing and I entitled it wrong, because we called it a motion for final decree and approval of payments. Approval of payments.

THE COURT: That's not what it says. It just —

MR. YOUNG: A motion for distribution of funds is kind of the same.

THE COURT: It just said motion for final decree.

MR. YOUNG: Yes, Your Honor.

THE COURT: Where does it say and approval of payments?

MR. YOUNG: All right. I thought that was included in it.

MS. JAY: Your honor, I will just mention that I thought we were here today also on something called motion for final decree and approval of payment. I'm not sure what documentation started that out, —

THE COURT: But —

MS. JAY: — but the declarations and all the other supporting documents and oppositions tagged that on. I don't know where it started, but that was Marathon's understanding as [50] we walked through the door that today we were going to address that issue.

MR. BREGMAN: Your Honor, —

MR. YOUNG: I'd be happy to redo it that way and —

THE COURT: Well, —

MR. KNUDSON: I think —

MR. YOUNG: — there are a few things that need to be cleared up that I think — like cancelled checks. Either they're there, they have an existence or not, and they'll either be produced or they won't be. And if Your Honor or counsel want Mr. Banks present or a — that can be arranged for, I think, my subpoena.

THE COURT: Well, now what if Mr. Banks only received $95,000?

MR. YOUNG: Well, then that's the —

THE COURT: Then I guess that —

MR. YOUNG: — the chips are going to fall where they —

THE COURT: Then I guess we've got a real bad problem that Mr. Griffin perjured himself, don't we, because he said he received $130,000.

MS. JAY: Hundred and twenty, —

MR. KNUDSON: Hundred and twenty thousand.

MS. JAY: — I think, Your Honor.

THE COURT: Plus, plus the $10,000 — the $10,000 [51] retainer.

MS. JAY: Plus the $10,000 deposit. I though that —

MR. KNUDSON: Plus another — which I claim is $1,000, which he acknowledged, and then the other thousand dollars in costs which apparently he has not.

MR. YOUNG: I am always slow to jump to such rapid conclusions —

THE COURT: Well, this is —

MR. YOUNG: — when I —

MR. KNUDSON: The documents speak for themselves.

THE COURT: You know, the problem I'm having —

MR. KNUDSON: They're before the Court.

THE COURT: — with this case —

MR. YOUNG: I know, it's a mess, but I think it's near the end —

THE COURT: — is there is no reason for it to be a mess. This is not a difficult case. The bookkeeping in this case is not difficult, okay? It's really a very simple case and the bookkeeping is very simple, and the — you know, and I just don't understand why it's being such an awful mess to handle except that Mr. Griffin is sandbagging, —

MR. KNUDSON: Your Honor, —

THE COURT: — and that's just a conclusion I have to come to because ultimately he's had to be pushed yelling, screaming and kicking every — every inch of this way and, you [52] know.

All right. Let's go to the 1995 budget. We didn't get that yet, the income. You said that I hadn't decided that one yet.

MR. YOUNG: Oh.

MR. KNUDSON: Yes. I guess that sort of — I thought about that after I — when I was looking through my notes.

We'd done the calculation for 1994, —

THE COURT: Okay.

MR. KNUDSON: — and we were going to do the one for — didn't get to 1995 for whatever reason. I'd have to go back —

MR. YOUNG: Let's see.

MR. KNUDSON: — for Mr. Griffin's documents. I think the Court has their calculations.

MR. YOUNG: I think Your Honor did do '95 last time.

MR. KNUDSON: We did '94.

MR. YOUNG: No, —

THE COURT: I don't remember.

MR. YOUNG: My notes indicate '95 —

MR. KNUDSON: That we did '95?

MR. YOUNG: — at about page —

THE COURT: Well, rather than redoing it, then listen to the tape and if I did it, I did it. If not, I'll have to do it next time. It's not going to change.

[53]

MR. KNUDSON: All right.

THE COURT: Okay. Now, I thought I did it, but I don't really remember.

MR. YOUNG: I recall Your Honor did do it.

THE COURT: All right. So, how long do you need? And you're going to subpoena Mr. Banks in.

MR. YOUNG: All right. This is to be a notice —

THE COURT: And you're going to give me cancelled checks on Mr. Corliss, or if it's only $3,000, then that's all he's going to be — then he's going to have to put a thousand dollars back, right?

MR. YOUNG: That's correct. Just as he has to return —

THE COURT: Okay. And somebody is going to bring a motion on dealing with this trust distribution so I have something in front of me upon which I can make a determination.

MR. YOUNG: That I assume would be attorney for the trust.

THE COURT: Well, not necessarily.

MR. YOUNG: All right.

THE COURT: He may be — he may bring a motion to request distribution or it may be that you bring a motion to request distribution pursuant to the plan, —

MR. YOUNG: All right.

THE COURT: — which is what you thought you had.

[54]

MR. YOUNG: I — yes.

THE COURT: Okay. And, I mean, I've done a lot of rulings already on, you know, on interpreting the plan but I don't think I've actually had a motion in front of me.

MR. YOUNG: All right.

THE COURT: It's all sort of just been — issues keep coming up.

MR. YOUNG: I think actually at the last hearing, quite a lot was pared down and —

THE COURT: Yeah.

MR. YOUNG: — and we do have focus. I am a little bit worried about this battle here, but that's your job to decide it.

THE COURT: Well, you know, —

MR. YOUNG: And I suggest that — then let's set a date. I have dates that are available.

THE COURT: Well, I have to go get my calendar, so hold on a minute.

(Pause - Judge leaves the bench; counsel conferring)

THE COURT: Okay. Let's go back on the record.

MR. YOUNG: You know, let me just go off the record.

THE COURT: No, we're off the record then.

(Off the record)

MR. HUFFMAN: Your Honor, I would like to suggest that we set down a briefing schedule such that Mr. Knudson and [55] the debtor and the trust all have an opportunity to brief thoroughly and produce the evidence with respect to the distributions. And I guess probably based on that, probably the trusts should bear the oar first and file some papers along with all of its evidence that supports its contention that it gave money or loaned money to Mr. Griffin, Sr., and then the debtor and Mr. Knudson and anyone else, counsel for Marathon, can all take shots at it and then I have opportunity to file a reply. That's one possibility —

THE COURT: Well, you've got —

MR. HUFFMAN: — and that's why I suggest that.

THE COURT: You've got a couple of things.

First of all, somebody should be bringing a motion to distribute.

MR. YOUNG: All right. We shall do that.

THE COURT: Okay. And just get that on file.

Now, there will in fact be, I'm sure, an opposition based upon the fact that the trusts never filed a proof of claim. If you wish to give me any points and authorities, you can. You don't really need to do too much. I already have your brief on that.

But as to the second part, which you're correct, is if I happen to decide that the trusts can now file a proof of claim, then I need to know that we have a valid claim to be filed.

[56]

So, I think that you're correct, Mr. Huffman, that it's your responsibility perhaps to — you can file it, you know, without waiting for this, to file something to show the validity of the claim.

MR. HUFFMAN: Yes, Your Honor. My only suggestion to that, Your Honor, was so that you didn't set an early date for —

THE COURT: Well, that — we'll —

MR. HUFFMAN: — the continued hearing and so that — we consider all of the briefing schedules so that everyone has a — has a good shot of —

THE COURT: I agree with that. So, —

MR. HUFFMAN: Thank you, Your Honor.

THE COURT: — you tell me when.

MR. KNUDSON: Your Honor, may I inquire of the Court?

THE COURT: Um-hmm.

MR. KNUDSON: It seems to me that — now you — you mentioned that we could file some opposition to the papers that —

THE COURT: If you wish to.

MR. KNUDSON: — were filed today. But the interesting question is, I have a problem with that in the sense that, first of all, they have not even established that they're — that they're claimants in the first — that they're creditors of this estate in the first place.

[57]

THE COURT: Well, then you don't have to do it until they file their papers —

MR. KNUDSON: But I also don't want to — you know, that I'll go on the record, is, if I don't file a response to this right now, I wanted them first to establish that they're creditors —

THE COURT: Right. Look, here's —

MR. KNUDSON: — and then, you know, —

THE COURT: — what I'm going to do.

MR. KNUDSON: — and I don't what to waive my rights to oppose his documents.

THE COURT: Here's what I'm going to do. I'm going to take a five minute recess. You all figure out your dates and briefing schedules. You know, figure out how long it's going to take you to do what, and then I'll give you a date, you know, in a particular range, you know, decide whether it's going to be in four weeks, five weeks, six weeks, whatever it is, and I've got my calendar right here and we will choose a date, okay?

MS. JAY: Do we need five minutes? This should do it.

MR. HUFFMAN: We don't — let's just do it.

MS. JAY: Let's just do it, Your Honor.

MR. HUFFMAN: Because we don't —

MS. JAY: I mean, just —

[58]

THE COURT: Well, so do it. I don't want to be the one doing it. You decide what you're going to do.

MR. HUFFMAN: Your Honor, I would suggest that I'll file my additional papers with the supporting evidence three weeks from today, which would be April 22, unless someone has an objection to that.

MR. YOUNG: That would be fine. I —

MS. JAY: So, wait for —

MR. YOUNG: I shall be in a one-week three strike trial that begins on May 1, or actually we — that May 1 is 57 of 60 — 57, 58 59 —

THE COURT: Well, you need to bring your motion to distribute and you can go ahead and file that tomorrow. I mean, you know, —

MR. YOUNG: Yes, Your Honor.

THE COURT: — just do it.

MR. YOUNG: But I'm just wondering. I just thought on the motion, do we set a date on that motion that Your Honor gives us today?

THE COURT: Well, I — after Mr. Huffman's brief, then everybody still needs a chance to have a chance to respond to it, so nothing is going to happen for at least two weeks after that.

MR. YOUNG: Um-hmm.

MS. JAY: May I suggest a hearing like the week of [59] May — I'm figuring around my trial schedule — the week of May 12th, some date in that week for all of the hearings, including the continued hearings on schedule today?

THE COURT: No, that's probably not going to — it might work. It might work on the 15th and it might not, I haven't yet decided that particular day, and I have a half-day hearing down here no the 22nd, but I could take you the afternoon of the 22nd.

MR. YOUNG: That would be fine.

MR. HUFFMAN: That would be fine, Your Honor.

MR. KNUDSON: It may be that I'm going to be out of town the 22nd. Is the 21st available?

MS. JAY: The 21st is good with me.

MR. YOUNG: Same.

THE COURT: Well, you'll have to come to the Valley.

MS. JAY: Better.

MR. YOUNG: That would be all right.

MR. HUFFMAN: That's all right, Your Honor.

MS. JAY: No parking charges though, Your Honor.

MR. YOUNG: My favorite delis are out there.

THE COURT: Well, actually I may be downtown for lunch for the executive committee of the Los Angeles County Bar Association. Let's see, why do I have a question mark on that?

Oh, yeah, —

MR. YOUNG: Is the 20th better, Your Honor?

[60]

THE COURT: No. No, no, no, not necessarily. No, I won't be here the 20th. See, I have a meeting of the Conference of the Chief Bankruptcy Judges in Montana and that's why I may — like the 15th may be fine but I may be leaving on the 15th, so I don't know. It's not easy to get there from here. And it doesn't end until after the 20th, so I won't be back till that evening, assuming I make it back.

MR. YOUNG: The 22nd might be better then, it'd give you a day of rest and be fresh.

THE COURT: Well, that's okay. It's just that I'm just trying to decide. I have the executive committee of the Los Angeles — this is on the west side, that's fine. Let's make it at 2:30 on the 21st of May, and that'll be at Roybal.

MS. JAY: Okay.

THE COURT: No, not at Roybal; that'll be at Warner Center, not here.

MR. YOUNG: Okay.

THE COURT: Okay. Now, you're going to subpoena in Mr. Banks. Who's doing that?

MR. YOUNG: I shall do it if the Court please.

THE COURT: Okay. And you can set any of your motions for that time, at 2:30 p.m. in Warner Center.

MR. HUFFMAN: So, will we have the balance of the afternoon, Your Honor, or we —

THE COURT: Yeah. But I would hope we don't have to [61] take it.

MR. YOUNG: Plan on dinner in Woodland Hills, counsel.

THE COURT: I hope we don't have to take it.

MR. HUFFMAN: Well, I hope so, too, Your Honor, but I — I wanted to make sure we weren't tracked that we were going to have an hour or a half hour or something, seeing we've been here two hours.

THE COURT: All right. We'll see you in May.

MR. HUFFMAN: Thank you, Your Honor.

MR. KNUDSON: Thank you, Your Honor.

THE COURT: Thank you.

MR. KNUDSON: Do you think we'll just trail —

MR. BREGMAN: Yeah. Your Honor, my motion will be trailing?

THE COURT: I'm moving it to the same time.

MR. BREGMAN: Thank you, Your Honor.

THE COURT: Okay. Now, the U.S. Trustee will not be there that day, but that's the way life goes.

Okay. So, this will be 5/21.

(Whereupon, the hearing in the above-entitled matter was adjourned.)

CERTIFICATE

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Gwen J. Van Every
Gwen J. Van Every, Transcriber

January 14, 1998

Supreme Court, U.S.
FILED
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No. 01-0371

In The

Supreme Court of the United States

REVOCABLE INTERVIVOS TRUST OF MABEL MARIE GRIFFIN AND GRIFFIN FAMILY TRUST,

Petitioners,

vs.

HAROLD EUGENE GRIFFIN, MARATHON NATIONAL BANK, CALIFORNIA INVESTMENT CLUB AND TD INVESTMENT FUND,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Respondent, Marathon National Bank, a National Banking Association, is a wholly-owned subsidiary and is operated by Marathon Bancorp, a one-bank holding company.

Respondents, California Investment Club and TD Investment Fund, are not corporations.

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REASON FOR DENYING PETITION

There is no reason, much less the compelling reason required by Rule 10, for the Court to exercise its discretionary authority to review the Ninth Circuit's decision. In affirming the decision of the Bankruptcy Appellate Panel of the Ninth Circuit, which affirmed the decision of the United States Bankruptcy Court, Central District of California, the Ninth Circuit correctly held that the Revocable Intervivos Trust of Mabel Marie Griffin and Griffin Family Trust, the Petitioners herein ("Trusts"), failed to show that the Bankruptcy Judge's finding that "the equities are not with the Griffins" was an abuse of discretion. Here, the appellate courts confirmed the decision that the Bankruptcy Court's Order denying the Trusts the right to participate in the distribution because they failed to file their claims is, in effect, an order enforcing the terms of the Plan. This was particularly true because there was no question that the Trusts received actual notice of the bar date of March 22, 1994 (the Trustee and Co-Beneficiary of the Trusts and the Debtor-in-Possession, being one and the same person) and, further, that the Trusts waited almost three (3) years after the bar date before even requesting permission to file late proofs of claim and, even then, without any explanation for their failure to comply with the deadline. The Ninth Circuit's decision does not conflict with any decisions of this Court or of any other United States Court of Appeal and certainly does not decide an important question of federal law that should be resolved by this Court. The Petition filed by the Trusts should be denied.

I.

PERCEIVED MISSTATEMENTS MADE IN THE PETITION

Pursuant to Rule 15, Respondents bring to the attention of this Court the following perceived misstatements made in the Trusts' Petition. Page numbers refer to page numbers in the Petition.

1. Page 1.

Perceived Misstatement: The Petition erroneously states that the Ninth Circuit denied the motion to distribute funds to the Trusts and denied the Trusts' request to file late proofs of claim, "on the sole ground that Harold Eugene Griffin, as an attorney, should have known better."

Correct Statement: The Debtor's motion to disburse funds and the request of the Trusts to file late proofs of claim were denied, not on a sole ground, but on several grounds. Those grounds include, but are not limited to, (a) that the Trusts were listed on the Debtor's Schedule F as "unliquidated claims", which require, under Bankruptcy Rule 3003(c)(2), proofs of claim to be filed; (b) no proofs of claim were filed on behalf of the Trusts; (c) the amended Plan of Reorganization as confirmed by the Court required the Trusts, as well as all other members of that class, to file proofs of claim in order to share in the distribution; (d) the Trusts had actual notice of the bar date; (e) there was no document that the Trusts could point to as an informal proof of claim; and (f) the Debtor-in-Possession, as an attorney, should have known better. [Pet. App. C, pp. 17a-19a.]

2. Page 2.

Perceived Misstatement: "The respective claims in the amounts of $175,000.00 and $250,000.00 were inadvertently noted by GRIFFIN's non-lawyer's son as 'unliquidated' ".

Correct Statement: A complete, correct statement, will include not only the assistance of the Debtor by his non-lawyer son, but the fact that the Debtor himself, was a lawyer. In addition, after the Debtor filed his Chapter 11 bankruptcy in pro per, the Debtor employed bankruptcy counsel, Lawrence R. Young and John Cruickshank, both at the law firm of Lawrence R. Young and Associates, to represent the Debtor and, during the years of such representation, the Debtor's schedules were never amended.

3. Page 2.

Perceived Misstatement: "The claims against the GRIFFIN estate arose as a result of GRIFFIN's borrowing from the TRUSTS prior to the filing of the Chapter 11 petition."

Correct Statement: This statement in the Petition not only assumes facts not in evidence but, in fact, is contrary to the evidence presented. The Trusts failed to show that the Trusts were, in fact, even creditors of this Debtor's estate.

4. Page 4.

Perceived Misstatement: The entirety of page 4, as it applies to this case.

Correct Statement: The facts set forth in the four (4) paragraphs on page 4 of the Petition are not facts relevant or accurate to the case at bar. Instead, it should be made clear, that those four (4) paragraphs are apparently the

Trusts' interpretation of the facts in the case of *Pioneer Investment Services Co. v. Brunswick Associated Limited Partnership*, 507 U.S. 380, 113 S.Ct. 1489 (1993).

5. Page 5.

Perceived Misstatement: "*Without explaining how*, Marathon National Bank, California Investment Club and TD Investment Fund [Respondents] contend that the length of the delay between plan confirmation on June 16, 1994 and the TRUSTS' April 1, 1997 request to file proofs of claim constituted a delay in the case which was highly prejudicial to all creditors and impacted substantially on the administration of the Chapter 11 case. This is simply untrue." [Emphasis added.]

Correct Statement: At the very last moment on the day of April 1, 1997 hearing, Petitioners filed a brief seeking a pro rata distribution of the Cancienne proceeds. Respondents argued at the hearing that the late filing of brief, as well as the remedy Petitioners sought, were highly prejudicial to creditors and impacted substantially on the administration of the case. [Pet. App. E, pp. 34a-35a, 55a-56a.]

6. Page 5.

Perceived Misstatement: "All the creditors knew that the TRUSTS were requesting that their claims be paid if the estate won the Cancienne case."

Correct Statement: All creditors only knew that all members of Classes 2.1 and 2.2, including the Trusts, who timely filed proofs of claim and, which claims were subsequently allowed by the Court, would be paid their pro

rata share of the Cancienne case recovery as provided by the Plan. [Resp. App. 2, pp. 3a and 5a.]

7. Page 5.

Perceived Misstatement: "The plan contemplated that there would be an additional payment to all creditors if the Cancienne case resulted in a settlement beneficial to the estate.

Specifically, the plan provided that members of both Class 2.1 and 2.2 would receive their pro rata share of the Cancienne settlement after payment of attorneys' fees and costs."

Correct Statement: The Plan clearly set forth that proceeds from the Cancienne settlement would be distributed not to all creditors but only those creditors who timely filed proofs of claim, which were allowed by the Court. [Resp. App. 2, pp. 3a and 5a.]

8. Page 5.

Perceived Misstatement: "The delay in the administration of the estate was caused by the failure of the Respondents to object to the allowance of the TRUSTS' claims until it became clear there would be sufficient funds to pay the claims of these respondents in their entirety. These objections should have been raised at plan confirmation.

Marathon National Bank was included as a member of the Class and did not need to object unless it was to the allowance of the TRUSTS' claims. It made no such objection at that time.

California Investment Club and TD Investment Fund did object, requesting that they be included as members

of the Class. They did not raise any objection to the allowance of the TRUSTS' claims."

Correct Statement: In balancing the equities, the Bankruptcy Court correctly considered the factors regarding the length of the delay and its impact on efficient judicial administration. [Pet. App. B, p. 12a; Pet. App. E, pp. 38a and 50a.]

9. Page 6.

Perceived Misstatement: "The debtor was required to go to great lengths to demonstrate conclusively to the Court that he had borrowed money from the TRUSTS."

Correct Statement: In fact, the Debtor never demonstrated conclusively, or otherwise, to the Bankruptcy Court that he had borrowed money from the Trusts.

10. Page 6.

Perceived Misstatement: "Because all parties knew both that the TRUSTS were making claims and the amount of those claims, they should have been equitably estopped from objecting to the late filings, . . . "

Correct Statement: What the respondents knew was that the Trusts were required to file proofs of claim if they intended to participate in distribution. Respondents also knew that, had the Trusts filed proofs of claim, those claims could have been objected to. No such claims were ever filed and, therefore, no such objections to claims were filed. [Resp. App. 2, p. 3a; Pet. App. C, p. 19a.]

11. Page 6.

Perceived Misstatement: "The neglect of Petitioners and their counsel, i.e., GRIFFIN was excusable. By its comment that as an attorney, GRIFFIN should have followed the rules, the Bankruptcy Court emphasized the fact that GRIFFIN had reasonable control over the cause of the delay, while it ignored other facts profoundly affecting the equities of the situation."

Correct Statement: Mr. Griffin was never the attorney for the Petitioners (Trusts). The attorney for the Trusts at the Bankruptcy Court level was James L. Huffman. [Pet. App. E, p. 25a.]

12. Page 6.

Perceived Misstatement: "At the relevant time, GRIFFIN was an elderly, hearing-impaired attorney who specialized in landlord-tenant cases. He had no experience in bankruptcy cases."

Correct Statement: The debtor, Harold Eugene Griffin, did, in fact, have experience in bankruptcy cases, particularly involving landlord/tenant issues.

13. Page 6.

Perceived Misstatement: "The Class 2.2 creditors knew from the moment they reviewed and approved the plan that the TRUSTS had claims against the estate, the amount of the claim for each TRUST, and how GRIFFIN proposed to pay those claims."

Correct Statement: The creditors knew that the Trusts were listed as unsecured non-priority unliquidated creditors on Schedule "F" and that, pursuant to the Plan, that the

Trusts were members of Class 2.2 based upon proofs of claim to be filed. [Resp. App. 1, p. 1a; Resp. App. 2, pp. 3a and 5a.]

14. Page 7.

Perceived Misstatement: "Apart from the failure of the Respondents to assert timely objections to allowance of the TRUSTS' claims . . . "

Corrected Statement: Respondents did not fail to timely assert objection to the claims of the Trusts, because the Trusts never filed any such claims. [Pet. App. C, p. 19a.]

15. Page 7.

Perceived Misstatement: "Although the Bankruptcy Court raised a question as to whether the TRUSTS acted in good faith, no hearing contesting the validity of the TRUSTS' claims was ever conducted."

Correct Statement: No hearing contesting the validity of the Trusts' claims was ever conducted because the Trusts never filed a claim, timely or otherwise. Nor did the Trusts ever file a motion or adversary regarding the validity of their purported claims.

16. Page 7.

Perceived Misstatement: "Allowing the TRUSTS to file their proofs of claim would in no way prejudice anyone because everyone knew about the TRUSTS' claims and the amount owed to each trust."

Correct Statement: Respondents have already been severely prejudiced by being delayed for almost four (4) years, all due to the failure of the Trusts to comply with

the bankruptcy law and, in particular, with the confirmed Plan.

II.

COURT'S DECISION IN DENYING AN EXTENSION OF TIME TO PETITIONERS TO FILE A PROOF OF CLAIM AFTER EXPIRATION OF THE CLAIMS BAR DATE AND PLAN CONFIRMATION DOES NOT CONFLICT WITH THIS COURT'S DECISION IN *PIONEER*

Whether or not to extend a bar date is a matter within the sound discretion of the bankruptcy court and such a decision will not be set aside absent abuse of discretion. *In re Dix*, 95 B.R. 134, 136 (9th Cir. BAP 1988). The Ninth Circuit Court of Appeals held that "[a] reorganization plan resembles a consent decree and, therefore, should be construed basically as a contract." *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 588 (9th Cir. 1993). [Pet. App. B, pp. 7a-8a.]

It is undisputed that the Debtor, Harold Eugene Griffin, was the Trustee of the Trusts. It is also undisputed that Debtor is the son of Alfred Gus Griffin and Mabel Marie Griffin, beneficiaries of their respective Trusts, the Petitioners herein. Debtor is also the Co-Beneficiary of those Trusts.

At the April 1, 1997 hearing, *no* competent evidence was provided to the bankruptcy court that Mr. Griffin lacked *actual* knowledge of (1) the bar date and its significance (2) the contents of his second amended plan of reorganization and (3) the listing of the claims of the Trusts as "unliquidated". The trustors/beneficiaries of the respective Trusts, Alfred Gus Griffin and Mabel Marie

Griffin, also provided *no* contrary, competent evidence that they lacked *actual* knowledge of the claims bar date or of the contents of the Plan at that hearing or at any time.

After hearing the arguments and considering the evidence, the Court found that, as a debtor and debtor-in-possession, Trustee Harold Griffin, had *actual* knowledge of the claims bar date and its significance and that he had listed the Trusts' claims as "unliquidated" on Schedule F in his Chapter 11, as well the contents of his "Second Amended Plan of Reorganization, As Amended by Interlineation." [Pet. App. E, pp. 37a, 42a-43a, 50a, 58a and 62a.] The Court also found that the Debtor had listed on his Schedule F [Resp. App. 1] that all claims were "unliquidated," and that such listing was improper and in bad faith and that redoing Schedule F to properly schedule, as suggested by counsel for the Trusts, each creditor five (5) years after the filing of the Chapter 11 would be inequitable and undermine the administration of the Chapter 11 case. [Pet. App. E, pp. 38a and 50a.]

On a motion to extend time, it is undisputed that the bankruptcy court has the discretionary power to extend, for cause shown, the time to file a proof of claim after expiration of a claims bar date in a Chapter 11 case pursuant to Bankruptcy Rule 9006(b)(1). There was no such motion filed by the Trusts. Nevertheless, the three exceptions that would permit a late filing under Bankruptcy Rule 3003(c)(3) were not applicable to the instant case. Petitioners are not infants or incompetents, judgment creditors, or claimants under an executory contract or unexpired lease. [*Bankruptcy Rules*, Rule 3002(c)(2), (3) and (4).] As such, the Bankruptcy Court properly found

that the Trusts had failed to file timely proofs of claim and that under Article II, Section 2.02 of the Plan, that they were not entitled to participate in the pro rata distribution of funds from the "Cancienne Settlement". [Pet. App. C, pp. 18a-20a, Resp. App. 2, p. 13a.]

Under Bankruptcy Rule 9006(b)(1), the court exercises discretionary power and its decision to grant or deny the motion for extension of time is an "equitable one, taking account of all relevant circumstances surrounding the party's omission" and that Rule requires a finding that a party's failure to file a proof of claim within the court-ordered claims bar date was "excusable". *Pioneer Inv. Services Co. v. Brunswick Associates Limited Partnership, et al.* (1993) 507 U.S. 380, 394, 123 L.Ed.2d 74, 113 S.Ct. 1489, 1498. The instant case presents an entirely different factual pattern from *Pioneer*. Unlike the party in the *Pioneer* case who filed a motion to permit a late filing approximately 20 days after expiration of the claims bar date due to excusable neglect of their attorney, the Trusts did *not* argue that the failure to timely file their proofs of claim was due to any attorney negligence or excusable neglect. The length of delay between the confirmation of the amended Plan on *June 16, 1994* and the Trusts' request, on or about *April 1, 1997*, to file a late proof of claim was substantial, unlike the twenty (20) days of the parties in *Pioneer* and, as the Bankruptcy Court noted at the hearing on April 1, 1997, this delay was highly prejudicial to all creditors and impacted substantially on the administration of the Chapter 11 case. [Pet. App. E, pp. 36a-37a and 42a-43a.]

It also is significant that this Chapter 11 case was filed almost seven years ago: on *December 29, 1992*. During the approximate *twenty-one (21) months* between the filing of the voluntary Chapter 11 petition and the hearing on the confirmation of the Plan, the Trusts, like the Respondents and other creditors, were on notice that all creditors were free to examine the Debtor's schedules, in particular Schedule "F", to determine if their claim was properly scheduled and whether they were required to file a proof of claim so they could properly vote on the Plan and participate in any distribution. [Resp. App. 3, pp. 8a-10a.] This examination and the ability to file a proof of claim was within the control of the Trusts and within the actual control of their Trustee, the Debtor Harold Griffin. Their collective lack of inquiry, combined with actual and constructive knowledge, from December 29, 1992 to April 1, 1997, vitiates any argument that their neglect was excusable. Such conduct is evidence of bad faith under the standards enunciated in *Pioneer*. As stated in *Pioneer*, the "excusable" requirement is to "deter creditors or other parties from freely ignoring court-ordered deadlines in the hopes of winning a permissive reprieve under Rule 9006(b)(1)". *Id.*, at 395. It is just this type of conduct for which Bankruptcy Rule 9006(b)(1) was formulated to prevent.

In *Pioneer*, this Court stated further that "the proper focus is upon whether the neglect of respondents *and their counsel* was excusable." *Id.*, at 397. Generally, Bankruptcy Rule 9006(b)(1) has focused on the neglect of attorneys. By analogy, Respondents contend that the Trusts, like the parties in *Pioneer*, should be held accountable for the errors and omissions of their Trustee. As the Chapter 11

debtor, the Trusts' Trustee, was in an unique position to have actual, intimate knowledge of the court-ordered claims bar date, contents of the confirmed Plan and his bankruptcy schedules. The Trusts should be held accountable for their Trustee's errors, just as if it was their attorney's errors and omissions. *Link v. Wabash R. Co.*, (1992) 370 U.S. 626, 8 L.Ed.2d 734, 82 S.Ct. 1386.

The instant case also differs from *Pioneer* since the notice of the court-ordered claims bar date in the case at bar was contained in the notice of the motion and motion to confirm the proposed Chapter 11 Plan, which was served in the ordinary course of this Chapter 11 case. It was not issued with the notice of a creditors meeting as in *Pioneer*, which the Court considered significant. *Supra*, at 398, 113 S.Ct. at 1499.

Under the "excusable" neglect standards of *Pioneer*, the Bankruptcy Court found ample evidence that there was prejudice to creditors as well as to the efficient judicial administration of the Chapter 11 case, that there was evidence of bad faith, and that the filing or the lack of filing of the proof of claim within the claims bar date was within the reasonable control of the Trusts and their Trustee, Harold Griffin. [Pet. App. E, pp. 36a-37a, 58a and 61a-62a.] Unlike the parties in *Pioneer*, the Trusts never filed any proofs of claim at any time, nor did the Trusts ever seek by motion a court order to permit a late filing under Bankruptcy Rule 9006(b)(1).

The Bankruptcy Court did not err in finding, after balancing the equities, that there were sufficient facts to support a finding that there was no "excusable neglect" to permit a filing of late claim under Bankruptcy Rule

9006(b)(1) and the Court's findings are not contrary to the relevant factors for determining "excusable neglect" as enunciated by this Court in *Pioneer, Supra,* at 395, 113 S.Ct. 1498. [Pet. App. C, pp. 18a-19a.]

III.

A CREDITOR MAY OBJECT TO A CLAIM AFTER A PLAN OF REORGANIZATION HAS BEEN CONFIRMED AND MAY ALSO OBJECT TO ANY DISTRIBUTION OF FUNDS THAT DOES NOT ADHERE TO THE TERMS AND CONDITIONS OF THE CONFIRMED PLAN

A confirmed plan of reorganization has a binding effect on all parties. 11 U.S.C. § 1141. It is not subject to collateral attack and it is res judicata as to all questions and issues that could have or should have been raised at the confirmation hearing on the plan of reorganization. *Tullis v. Barton,* 107 F.3d 685, 691 (9th Cir. 1995) and *In re Pardee,* 218 B.R. 916, 924 (9th Cir BAP 1998).

The issue of allowance of claims and the pro rata distribution of available funds to members of classes 2.1 and 2.2 could not have been raised prior to confirmation of the Plan in that it is undisputed that the Trusts did *not* file any proofs of claim within the court-ordered claims bar date of March 22, 1994, or anytime thereafter. As such, the Respondents retained their rights, as interested parties, to object to the allowance of any proof of claim, had the proofs been allowed by the Bankruptcy Court to be filed by the Trusts. 11 U.S.C. § 502(a). The Bankruptcy Court acknowledged that, if a proof of claim were permitted to be filed by the Trusts, the claim would be subject to objection, which is proper under 11 U.S.C. § 502(b). [Pet.

App. E, pp. 42a-43a.] The Bankruptcy Court ruled (1) that no funds were to be distributed to the Trusts from the "Cancienne Settlement" and (2) that the request of the Trusts to file a proof of claim was denied pursuant to Bankruptcy Rule 9006(b)(1). [Pet. App. C, 18a-20a.]

The Petitioners suggest that Respondents notwithstanding that Petitioners never filed proofs of claim, cannot object to the distribution to the Trusts because the Plan specifically provided for the Trusts and the Respondents as members of Class 2.2. Like the Trusts, the Respondents are bound by all the terms and conditions of the confirmed Plan. One of those terms and conditions was the filing of a proof of claim, if required, before expiration of the court-ordered claims bar date. Another term and condition of the Plan was that any distribution was to be made to only holders of *allowed* claims. The mere fact that, under the confirmed Plan, the Trusts were classified as *members* of Class 2.2 does not automatically entitle them to a distribution any more than the Respondents. Under Article II, Section 2.01 of the Plan, the only distribution is to those members of Class 2.2 who have filed, if required, a proof of claim that has been allowed by the Bankruptcy Court and the subsequent consideration by the bankruptcy court of any objections thereto by interested parties after hearing and notice. 11 U.S.C. § 502(a). [Resp. App. 2, pp. 3a-5a.] Unlike the Trusts, the Respondents in Class 2.2 timely filed their proofs of claim as required by the Plan because their claims were listed as "unliquidated." [Resp. App. 2, p. 3a.]

It cannot be contended that Respondents remained in the background before objecting to distribution of any funds to the Trusts. Until and if funds became available

from the "Cancienne Settlement," the provisions of the Plan would not become operative. Only at the time of the occurrence of this condition precedent could the Respondents file any objections to any proposed distribution and request that such distribution be made pursuant to the terms and conditions of the confirmed Plan. [Resp. App. 2, pp. 3a-5a.] As such, Respondents' objections to the distribution were timely and not tardy. The Bankruptcy Court's findings of fact and conclusions of law were proper. The remedy sought by the Trusts would undo and undermine the certainty of the confirmation process.

IV.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

September 28, 2001

Respectfully submitted,

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Form B6F
(10/89)

In re HAROLD E. GRIFFIN, Debtor

Case No LA92-59106-GM (If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE OR JOINT	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DDISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 4226-950-131-745 4226-623-502-751 Chase Manhattan Bank P.O. Box 15491 Willmington, DE 19850-5491			1992 Visa Cards		X		$8,000
ACCOUNT NO. 07-RC26811 Tri-Co Disposal 9820 Cherry Ave. Fontana, CA 92334			1992 Rubbish removal		X		$3,835
ACCOUNT NO. Trust Estate of Alfred Gus Griffin 1753 - 15th Street, #B Santa Monica, CA 90404			1992 Family Trust		X		$250,000
ACCOUNT NO. Trust Estate of Mabel Marie Griffin 1753 - 15th Street, #B Santa Monica, CA 90404			1992 Family Trust		X		$175,000
ACCOUNT NO. Ultimate Carpet Care 2512 Bedford Ave. Hemet, CA 92454			1992 Carpet cleaning		X		$125

Sheet no. 11 of 12 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) ▶ $ 435,960

Total ▶ $

(Use only on last page of the completed Schedule E)

1a

APPENDIX 1

BEST AVAILABLE COPY

APPENDIX 2

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Attorneys for Debtors

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:	Chapter 11
HAROLD E. GRIFFIN,	Case No. LA 92-59106-GM
Debtors.	SECOND AMENDED PLAN OF REORGANIZATION PROPOSED BY DEBTOR AS AMENDED BY INTERLINEATION

HAROLD E. GRIFFIN, Debtor and Debtor-in-Possession ("Debtor") proposes the following Plan or Reorganization pursuant to the Provisions of Chapter 11, Title 11, United States Code (11 U.S.C. 101, et seq.);

ARTICLE I: DEFINITIONS

For purposes of this Plan of Reorganization, the following terms shall have the following meanings unless the context clearly requires otherwise:

1.01 HAROLD E. GRIFFIN: Debtor in these proceedings.

1.02 Administrative Expenses: Any claim entitled to priority pursuant to Sections 507(a)(1), (2), (3), (4), (5), (6),

* * *

1.26 As used herein, the masculine includes the feminine and vice versa.

ARTICLE II: GENERAL TERMS AND PROVISIONS

The following general terms and provisions apply to this Plan:

2.01 This Plan is intended to deal with all claims against the Debtor of whatever character whether or not disputed, contingent, liquidated and whether or not allowed by the Court pursuant to section 502(a) of the Code. However, only those claims allowed pursuant to Section 502(a) of the Code will receive treatment afforded by the Plan in Articles III and IV.

2.02 In order to vote or receive a distribution under the Plan, a Creditor must have filed a Proof of Claim with the court on or before the Bar Date established by the Court of *March 22, 1994*, unless a claim is included in the schedule of debts filed by the Debtors in this Case and is not scheduled as disputed, contingent or unliquidated. However, a Claim will not be allowed in excess of the amount scheduled unless a Proof of Claim is filed. If a claim is not scheduled or is scheduled but disputed, contingent or unliquidated, the creditor will not be allowed to participate in voting or distribution if he has not timely filed a Proof of Claim in the proper form. If the Creditor has previously filed a Proof of Claim, there is no necessity to file a new Proof of claim, unless the Creditor wishes to amend the Proof of Claim previously filed.

2.03 To the extent required pursuant to Section 1124(2) or 1129(2)(A) of the Code to preserve the rights of a Creditor having a Secured Claim dealt with pursuant to either section, the lien or

* * *

in the next five years or in the event the Debtor sells any real property at a profit as above described. The amount of any such distribution will be made pro rata to each Claim Holder in this Class. Since the above amounts are unknown at this time, it is not possible to determine the exact amount which you could receive.

CLASS 2.2

Non Priority Unsecured Claims of insiders and the unsecured portion of secured claims:

The following Claim Holders are members of this Class:

Name of Creditor	Amount of Claim
Trust Estate of Gus Griffin	$250,000.00
Trust Estate of Mabel Griffin	175,000.00
Marathan National Bank	27,556.08

Total amount allowed claims: $452,556.08 plus accrued interest and other charges based upon a Proof of Claim to be filed in this case.

Total amount of all payments (over time) to satisfy claims: No distribution shall be made to creditors in this Class unless and until the Debtor realizes monies from any of the following matters:

1. The Debtor is currently involved in a lawsuit brought by him against Douglas Cancienne and others. **In the event there is a cash recovery from this action, the total amount of that recovery less any expenses including attorney's fees to be paid therefrom shall be paid on a pro rata basis to all creditors in Classes 2.1 and 2.2 on a pro rata basis.** In the event the monies realized therefrom are not received or the case is not fully settled prior to the end of the term provided for in the Plan, then this bankruptcy case shall not be closed until such time as this case has been finally resolved. In the event the payment is made over time as a result of a settlement or settlement after judgment regarding payment, then the amounts to be disbursed shall be disbursed immediately following receipt to all creditors in this Class as above set forth. For further information of this lawsuit, you are directed to V. DESCRIPTION OF DEBTOR'S PAST AND FUTURE BUSINESS AND EVENTS PRECIPITATING BANKRUPTCY FILING earlier in this Disclosure Statement

2. In the event the Debtor has net spendable income from his law practice or other income either from the sale of real property or otherwise which is not case collateral belonging to secured claim holders whose claim is discussed hereinabove, which said amount of net spendable income after payment of all regular and necessary expenses, a reasonable living allowance not greater than $22,000.00 per annum during the years provided for by the Plan and after payment of all federal and state income taxes, any amount greater than a reasonable sum for capital increases and replacement of equipment which is determined to be an amount of $20,000.00, net spendable income in excess of said amounts as above defined shall

be distributed to creditors of Classes 2.1 and 2.2 on a pro rata basis 60 days after the end of the calendar year.

3. Should the Debtor sell any parcel of real property owned by the estate at a profit and after the payment of all sales

* * *

Code terminate upon the Confirmation Date.

7.02 In determining whether a Class of Creditors has voted to accept or reject this Plan, the provisions of Sections 1129(a)(7), (8) and (10) of the Code shall control.

7.03 All Claims for return of preference payments or for fraudulent transfers, if any, pursuant to Sections 547 and 548 of the Code, all Claims relating to Post-Petition transactions under Section 549 of the Code, all Claims against third parties owed to or in favor of the Debtors to the extent not specifically compromised and released pursuant to the Plan, are hereby preserved and retained for enforcement by the Debtors subsequent to the confirmation of this Plan.

7.04 The Plan is intended to be a reorganization pursuant to the Internal Revenue Code, Title 26 U.S.C. Section 368(a)(1)(G) and 368(a)(2), as amended.

7.05 Notices other than notices covered by the code or Local Rules of Court and other communications shall be deemed given only if and when received by the party to which the notice is required to be given.

7.06 Upon completion of payments to Allowed Non-Priority Unsecured Claim Holders, the Debtor may

make an application to the Court for an Order closing this case.

ARTICLE VIII: RETENTION AND JURISDICTION

8.01 The Court shall retain jurisdiction over these proceedings after Confirmation as permitted by law.

Dated: January 27, 1994

HAROLD E. GRIFFIN

/s/ Harold E. Griffin

APPENDIX 3

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Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:	Case No. LA 92-59106-GM
HAROLD E. GRIFFIN,	Chapter 11
Debtor.	NOTICE OF LAST DATE TO FILE PROOFS OF CLAIM OR INTEREST March 22, 1994 (No Hearing Required)

TO ALL CREDITORS AND PARTIES IN INTEREST:

PLEASE TAKE NOTICE that, pursuant to an Order of the Bankruptcy Court, MARCH 22, 1994 is fixed as the last date on which creditors and/or interest holders of the above captioned Debtor may file proofs of claim or interest in this case.

PLEASE TAKE FURTHER NOTICE that a creditor need not file a proof of claim unless such creditor disputes the amount of its claim listed by the Debtor on its Schedules, or any amendments thereto, or disputes the categorization of its claim by the Debtor, or unless such claim is listed by the Debtor as contingent, disputed and/or unliquidated.

To assist you in ascertaining the status of your claim, the Debtor's Schedules are on file with the Clerk of the Bankruptcy Court and are available for inspection between 10:00 A.M. and 4:00 P.M. Monday through Friday. The Clerk of the Bankruptcy Court is located at 312 N. Spring Street in Los Angeles, CA 90012.

IF YOU ARE REQUIRED TO FILE A PROOF OF CLAIM AND YOU DO NOT FILE A PROOF OF CLAIM WITH THE CLERK OF THE BANKRUPTCY COURT LOCATED AT U.S. FEDERAL BUILDING, 300 N. LOS ANGELES STREET, LOS ANGELES, CA. 90012 BEFORE 4:00 P.M. ON OR BEFORE MARCH 22, 1994, YOUR CLAIM AGAINST DEBTOR AND DEBTOR IN POSSESSION, HAROLD E. GRIFFIN, WILL BE BARRED AND YOU WILL NOT PARTICIPATE IN ANY DISTRIBUTION TO BE PAID TO CREDITORS IN THIS CHAPTER 11 CASE.

PLEASE TAKE FURTHER NOTICE THAT IF YOUR CLAIM OR INTEREST IS BASED UPON ANY WRITING, YOU MUST ATTACH COPIES OF ANY AND ALL SUCH WRITINGS TO THE PROOF OF CLAIM OR INTEREST OR PROVIDE AN ADEQUATE EXPLANATION OF YOUR INABILITY TO DO SO.

PLEASE TAKE FURTHER NOTICE that, in addition to filing your proof of claim or interest with the Clerk of the Bankruptcy Court at the address set forth above, you must mail a copy of the complete proof of claim or interest to the attorneys for the Debtor, Lawrence R. Young, Law Offices of Lawrence Young, 9530 E. Imperial Highway, Suite E, Downey, CA 90242, Attn: John Cruickshank.

A proof of claim form is provided along with this notice.

BY ORDER OF THE COURT.

DATED: JANUARY 27, 1994

LAW OFFICES OF
LAWRENCE YOUNG

By: /s/ Lawrence R. Young
Lawrence R. Young

APPENDIX 4

LAWRENCE R. YOUNG
LAW OFFICES OF LAWRENCE YOUNG
9530 E. Imperial Highway, Suite E
Downey, CA 90242
(310) 926-5526
Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:	)	Case No. LA 92-59106-GM
HAROLD E. GRIFFIN,	)	Chpater 11
	)	
Debtor.	)	BALLOT FOR ACCEPTING OR REJECTING PLAN
	)	
	)	

BALLOT FOR ACCEPTING OR REJECTING PLAN OF REORGANIZATION

The Plan referred to in this ballot can be confirmed by the court and thereby made binding on you if it is accepted by the holders of more than two-thirds in amount and more than one-half in number of claims in each class actually voting on the Plan. In the event the requisite number of acceptances are not obtained, the court may nevertheless confirm the Plan if the court finds that the plan accords fair and equitable treatment to the class rejecting it. To have your vote count, you must complete and return this ballot.

THIS BALLOT MUST BE RECEIVED BY THE LAW OFFICES OF LAWRENCE YOUNG AT 9530 E. IMPERIAL HIGHWAY, SUITE E, DOWNEY, CA 90242 ON OR BEFORE 5:00 P.M. ON MARCH 22, 1994

The undersigned, a creditor of the above named debtor in the unpaid principal amount of $250,000.00, being a member of Class 2.2 and Sub-Class ___ (if this applies to your situation),

ACCEPTS XXX (Check Line if voting to Accept)

REJECTS ___ (Check Line if voting to reject)

the Plan of Reorganization of the above named Debtors.

Dated: 03/21/94

PRINT OR TYPE NAME:

SIGNED: Alfred G. Griffin
By: Alfred Gus Griffin
Title: Trust Estate of
Gus Griffin Trustor/
Beneficiary

Address: 1753 – 15th Street, Suite B
City: Santa Monica State: CA Zip 90404

LAWRENCE R. YOUNG
LAW OFFICES OF LAWRENCE YOUNG
9530 E. Imperial Highway, Suite E
Downey, CA 90242
(310) 926-5526
Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:	)	Case No. LA 92-59106-GM
HAROLD E. GRIFFIN,	)	Chpater 11
Debtor.	)	BALLOT FOR ACCEPTING OR REJECTING PLAN

BALLOT FOR ACCEPTING OR REJECTING PLAN OF REORGANIZATION

The Plan referred to in this ballot can be confirmed by the court and thereby made binding on you if it is accepted by the holders of more than two-thirds in amount and more than one-half in number of claims in each class actually voting on the Plan. In the event the requisite number of acceptances are not obtained, the court may nevertheless confirm the Plan if the court finds that the plan accords fair and equitable treatment to the class rejecting it. To have your vote count, you must complete and return this ballot.

THIS BALLOT MUST BE RECEIVED BY THE LAW OFFICES OF LAWRENCE YOUNG AT 9530 E. IMPERIAL HIGHWAY, SUITE E, DOWNEY, CA 90242 ON OR BEFORE 5:00 P.M. ON MARCH 22, 1994

The undersigned, a creditor of the above named debtor in the unpaid principal amount of $175,000.00, being a member of Class 2.2 and Sub-Class ___ (if this applies to your situation),

ACCEPTS XXX (Check Line if voting to Accept)

REJECTS ____ (Check Line if voting to reject)

the Plan of Reorganization of the above named Debtors.

Dated: 03/21/94

PRINT OR TYPE NAME:

SIGNED: Mabel M. Griffin
By: Mabel M. Griffin
Title: Trust Estate of
Mabel Griffin Trustor/
Beneficiary

Address: 1753 – 15th Street, Suite B
City: Santa Monica State: CA Zip 90404